# *Public Utilities Fortnightly*

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# Public Utilities Almanack

## AUGUST

| | | |
|---|---|---|
| **17** | T*h* | EDISON received $100,000 for his carbon transmitter used in telephones, 1876.<br>PRESIDENT WILSON conferred with railroad chiefs in effort to avoid a strike, 1916. |
| **18** | F | England issued its first patent for an incandescent lamp to MOLEGNS, 1841.<br>LA FAYETTE witnessed first commercial use of gas at Fredonia, New York, 1821. |
| **19** | S*a* | ORVILLE WRIGHT, co-inventor of the airplane, was born in Ohio, 1871.<br>JAMES WATT, discoverer of the motive power of steam, died, 1819. |
| **20** | S | W. D. COOLIDGE invented process of making tungsten for incandescent lamp, 1911.<br>¶ *The convention of the American Gas Association will open in Chicago, Sept. 25, 1933.* |
| **21** | M | EDISON'S exhibition third-rail trolley line was opened, Chicago, 1883.<br>MORGAN purchased Chicago, Great Western Railroad for $12,000,000, 1909. |
| **22** | T*u* | JOHN FITCH demonstrated his famous steamboat on the Delaware River, 1787.<br>S. P. LANGLEY, pioneer experimenter with airplanes, was born in Boston, 1834. |
| **23** | W | SIR WILLIAM GROVE operated his platinum filament incandescent lamp, 1840.<br>Lackawanna railroad conducted first successful tests of radio on moving trains, 1914. |
| **24** | T*h* | AMOS DOLBEAR was granted first U. S. patents on radio communication, 1882.<br>The first street lamps—oil lanterns—were put in use in London, 1417. |
| **25** | F | First B. & O. train ceremoniously entered Washington in four sections, 1835.<br>Gas was first used for lighting mariners' beacons at Narragansett Bay, 1812. |
| **26** | S*a* | Power generated from Niagara Falls was first put to commercial use, 1895.<br>First telephone exchange in South Carolina was opened at Charleston, 1879. |
| **27** | S | The Third Avenue elevated railroad in New York was opened for traffic, 1877.<br>"Wireless" telephony was demonstrated between Virginia and Panama, 1915. |
| **28** | M | America's first home-built locomotive *"Tom Thumb"* was put into operation, 1830.<br>Illuminating gas was exhibited in Peales' Museum, Baltimore, 1816. |
| **29** | T*u* | MICHAEL FARADAY discovered the principle of electromagnetic induction, 1831.<br>First water wheel was placed in operation at Muscle Shoals, 1925. |
| **30** | W | A horse-drawn passenger car won its race with a locomotive, Baltimore, 1831.<br>ARTHUR KORN, German inventor, transmitted pictures by radio, 1907. |

*Painting by José Maria Sert* *Courtesy of Rockefeller Center, N. Y.*

The Amelioration of Man by the Machine

Public Utilities
FORTNIGHTLY

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# The Dangers of Rigid Rate Structures

**The crisis to which the outworn theory of a rigidly fixed rate base has driven the industry and the imperative demand for a more flexible method of establishing rates that will conform to changing price levels.**

BY PHILIP CABOT

THE American theory and practice of public utility rate regulation seem to have been conceived by judges and administered by lawyers.

In theory, the "fair price" is held to be that price which will produce a fair return upon a "fair value" of the property devoted to the public service. Obviously where the fixed investment is over 90 per cent of the whole capital investment and the useful life of it is long, the logical and necessary result of this system is to produce a rigid price structure which does not adjust itself, and can hardly be adjusted, to rapid or frequent changes in the general price level or to changes in the national income. Rate regulation for the last thirty years, at least, has been an economic problem but public utility rate regulating is still done, or attempted, by a method appropriate to the economic conditions of the eighteenth century, rather than of the twentieth. Compared with the times in which we live, the eighteenth century was a static period in which a rigid price structure was normal, harmless, and perhaps necessary.

Beginning with the industrial revo-

lution, however, a gradual evolution has taken place. Economic change has become progressively more rapid, and is now the dominant fact in our industrial environment. During the period economic theory has been developed to explain the working of a dynamic industrial system, and the economists now claim to have developed a methodology by which the laws governing industrial change and growth can be discovered. While the amazingly rapid changes of the last generation have temporarily outrun the refinements of economic theory, many of its basic laws are still valid and, if violated, will recoil with devastating effect.

One of the most fundamental of these is the law of supply and demand. Without it the capitalist system cannot be explained and its persistent violation would wreck the system.

A DYNAMIC industrial life operated on the capitalist system appears to involve rythmic changes in demand, forcing changes in the price level which are often rapid and violent. During these periods of change the economic life of nations is dislocated and, unless adjustment to the new price level can be promptly achieved, suffering so great as to produce revolution is likely to result. Prompt adjustment to a new price level, however, is difficult, and may be impossible, unless all prices and costs are flexible. Rigidity in any large area of the whole price structure is likely to produce economic and political disaster.

The period through which we are now passing is a striking illustration of this law.

Something like half the costs which enter into production and distribution have become relatively or absolutely rigid. While the general price level has fallen perhaps 40 per cent during the last four years, interest, taxes, depreciation, some wages, and most public utility rates have remained rigid. In consequence, the operation of the law of supply and demand is obstructed, adjustment to the new price level is slow and painful, unemployment has reached alarming proportions, and this nation has apparently decided to embark on a program of inflation. With adjustment to the new price level obstructed by such a large group of rigid costs, inflation may be the only alternative to violent revolution, but the dangers of it are very great.

ONE of the basic causes of the trouble is the inflexibility of our price structure. Unless its flexibility can be restored, the life of capitalism as we know it is threatened.

An economic system in which the working of the law of supply and demand is obstructed is like a man in an advanced stage of arteriosclerosis. Sudden death may occur at any moment. The sudden death of an economic system is what has occurred in Russia, Italy, and Germany. Whether it has occurred in the United States, we do not yet know. It may have. The ossifying of certain members in the price structure is a major cause of our predicament. The causes of ossification, however, differ in the several members affected. Some are social, some political, but in the case of public utility rates the cause seems to have been ineptitude. We have set lawyers, judges, and politi-

cians to decide economic questions for which neither their character nor their training has fitted them. You might as well have asked a surgeon to tune a piano.

THE case of the railroads is perhaps the most dramatic. They are the backbone of our national transportation system, without which our national industry in its present form cannot function. Almost from its birth our method of rate regulation has been slowly ossifying the rate structure until today it is a grave question whether the patient will survive. Under the medical care of politicians and lawyers there is hardly any type of malpractice of which the railroads have not been the victims. Although it was obvious fifty years ago that monopoly under regulation was the proper economic technique in this field, Congress has obstinately insisted that competition must be maintained. The struggle between competition and monopoly during the last twenty years has forced the investment of billions of perfectly good capital in railroad equipment and railroad service which could not earn its board. A great sum of money has been added to the capitalization of the railroads without any corresponding increase in the value of our transportation system as a whole. The savings banks, life insurance companies, and private investors who have been so ill-advised as to invest in railroad securities on the faith of governmental control have sustained heavy losses and the remedies which should now be applied, if our investment of more than twenty billions in the railroads is to be saved, seem likely to be so bedeviled by political expediency as to be ineffective. We may ultimately be driven to government ownership in spite of the dangers it presents to our political institutions involved in this course.

In addition to forcing competition and monopoly to operate simultaneously in this field, Congress has made railroad regulation progressively more rigid, or more thorough as its advocates would say. Hundreds of millions have been spent by direction of Congress to determine the cost of the roads, although it is now perfectly clear that this information is of no value in determining freight or passenger rates. This expenditure was pure waste, as was foreseen by a few men familiar with the economics of the railroad industry before it was undertaken. But their warnings went unheeded. To make matters worse, the mixture of bureaucratic control and

¶ "A DOGMATIC *system of regulation resting upon the unwarranted assumption that monopoly and competition can operate successfully in the same industrial area at the same time and that prices should be determined by the value of the fixed plant, has contributed to the plight in which the nation finds its transportation system today. Unless a more realistic and flexible method of regulation can be devised, our other public utilities may not escape this fate.*"

political interference has tended to drive from the field of railroad administration the type of executive most urgently needed, and many of the men who remain seem to be suffering from an acute inferiority complex.

I HAVE tried to describe what has happened to the railroads at length because the gas, electric, and telephone utilities are today threatened by much the same forces which have gone far to ruin our railroad system.

The fate of the railroads is not yet sealed. They may yet be saved, but investors in railroad securities, with the example of the street railways before them and with the record of forty years of politico-economic regulation of the steam railroads as a guide, are likely to jump overboard if they ever again get near enough to swim ashore.

Investors in the securities of the other public utilities will do well to consider what lies before them.

IF the other public utilities are to escape the fate of the railroads they will need managements gifted with the highest type of statesmanship. During the early years of their life their major problems were mechanical; during the middle period they were economic; and it now appears that the stage into which they are entering will be predominantly political. Political shrewdness as it is commonly understood in this country will not serve them. What is needed is industrial statesmanship of a higher order than this generation has ever seen in the field of government.

To put it bluntly, these public utilities are threatened with strangulation by government regulation.

No informed person will suggest that government regulation is unnecessary and should be abandoned. That would be absurd, for we are obviously entering a period when all business will be subjected to government regulation. What is needed is not less regulation but regulation of a modern and not a medieval type. The type we now have was designed to meet the conditions of a static society such as existed a century ago where competition was absent or ineffective. In a rapidly changing society where competition is savage and universal it is out of date. It results in rigid rate structures which in periods of inflation (called prosperity) force overexpansion of the fixed plant of the utilities, because they are not allowed to check excessive and temporary demand by increasing their prices, and in periods of deflation makes it impossible to reduce rates so as to conform to the lower buying power of the customers without impairing the credit of the companies. It forces the companies to expand their plants at the worst possible time—that is, when costs are high—and leaves them staggering under a load of excessive fixed plant at the very time when they ought to be expanding—that is, when costs are low. If the rhythm were reversed so that plant expansion could be undertaken when prices were low, instead of when they were high, important economies could be achieved which would mean lower rates and more complete development of the market. Complete development of the market is, or should be, the aim of everyone connected with these industries either as owners, managers, or regulators, but the present method of

## The Present System of Utility Rate Making Has Been Wrongly Conceived from the Start

*"THE American theory and practice of public utility rate regulation seem to have been conceived by judges and administered by lawyers. . . . We have set lawyers, judges, and politicians to decide economic questions for which neither their character nor their training have fitted them. You might as well have asked a surgeon to tune a piano."*

rate regulation is a serious obstacle. What is needed to meet modern conditions is a flexible instead of a rigid method under which the prices of utility service could move in harmony with the general price level instead of producing a discord. Complete harmony would be difficult to achieve but the caterwauling of the present system could certainly be mitigated.

THE customers of these utilities would be the chief beneficiaries of this improvement but, strange as it may seem, they are clamoring for a more rigid application of the old system. They seem to have been thoroughly misled in regard to their true interests, and it may be impossible to reëducate them. Both the public utility managers and the politicians have been at fault, and statesmanship of a high order will be required to reëducate the customers and the voters in whose hands the fate of the utilities now rests.

AND there is another aspect of the situation which should cause the owners and managers of these industries more anxiety than is discernible. A review of the history of their development indicates that they are entering a period of increasing risks and diminishing profits.

At the date of the panic of '93 none of the three utilities which we are now considering was out of the promotion stage, but by 1907–08 all of them were well established and by 1920–21 they were in full vigor. These industries passed unscathed through the depressions of 1907 and 1920, their gross and net revenues in many cases showing actual gains.

The contrast with 1929–33 is dramatic.

Taking operating utilities as an example, their gross revenues have fallen 5 per cent or 10 per cent; net revenues 15 per cent to 25 per cent, and, owing to their heavy fixed charges, the revenues applicable to dividends have in many cases been cut in two. Their plight is not so bad as the railroads' but this depression has hit them much harder than any of its predecessors.

The reasons for this are not obscure. The development of the elec-

tric power industry during the last twenty years has been predominantly in the industrial power field, so that the power companies are now chained to the wheel of the business cycle as they have never been before. Add to this that the development of the domestic field has penetrated much deeper into the lower income groups of our population and that in the upper classes the quantities used for domestic purposes have been so much increased as to be a luxury instead of a necessity, and it is easy to see why the electric power industry has suffered more severely in this depression than ever before.

Gas utilities are in a similar position. Growth in recent years has been mainly in industrial uses and house heating. Both have shrunk heavily and, as in the case of the electric companies, the domestic customers have found that they could curtail their use without much trouble.

The telephone companies supply a different market but their plight is the same. The business use of telephone service which was rapidly approaching saturation collapsed with the business which it served, while the domestic use which had been expanded rapidly had reached a class where incomes were too small or too unstable to enable them to make permanent use of the service. It was a luxury which they have abandoned by the million during the last three years, leaving the companies with much idle plant on their hands.

THE situation in all three cases is similar. The development of business use has infected these industries, previously so stable, with the growing instability of the industrial structure of which they are now a part and in the domestic field their opportunities for expanded service provide a luxury which can be, and is, dispensed with when the national income is reduced. The expansion of all three, therefore, has clearly passed the point of maximum stability and all future expansion in excess of the growth of population will have to be in the *strata* of the market where the margins of profit are least and the risks of loss greatest. Each period of depression hereafter is likely to see these public utilities wallowing deeper and deeper in the mire as the railroads have in the past. They may all be in trouble next time unless something is done about it.

One thing that might be done about it is to improve the system of government rate regulation.

A dogmatic system of regulation resting upon the unwarranted assumption that monopoly and competition can operate successfully in the same industrial area at the same time, and that prices should be determined by the value of the fixed plant, has contributed to the plight in which the nation finds its transportation system today. Unless a more realistic and flexible method of regulation can be devised, our other public utilities may not escape this fate.

THERE are two reasons pointing to the necessity of a more flexible method of public utility regulation; one founded on business history, the other on business foresight.

Historic perspective shows that during the forty years since the rule in Smyth *v.* Ames was laid down radical

## Utility Rates Must Be Made More Flexible If Capital Is to Be Attracted to Them

*"If new capital is to be attracted on fair terms, public utility rates must be unshackled; they must be made as responsive as is possible under the circumstances to the law of supply and demand in order that the companies may make profit enough during periods of prosperity to carry them through the following depression."*

changes have occurred in the economic conditions under which all the public utilities operate. *Then* the railroads *did* have monopoly power, and *did* abuse it; now they have no monopoly power to abuse.

*Competition by substitution, and by whim, is now as keen in the public utility field as is consistent with the public interest.*

That it is not free competition is true, but we have finally discovered by painful experience that free competition means cut-throat competition and that it is the wage-earner's throat that is cut. During the last two or three years this nation has been slowly bleeding to death because of its reverence for free competition. One of the most important objects of the new Industrial Recovery Act is to put an end to cut-throat competition. When the smoke and dust have cleared away we shall find that what is left is a modified form of competition, comparable to what we have in the public utility field. The more savage forms of competition do not pay in the long run.

The increased effectiveness of competition in the public utility field during the last twenty years is a dominant fact and our forms of regulative procedure must be adjusted to meet the new conditions if private ownership is to survive. A lag of twenty years is about standard time in the operations of a democracy so that there is ground for hope that politicians and legislators will shortly give us some relief. Many of the regulating commissions have already seen the light. The so-called Coolidge Report on the railroad situation and recent railroad legislation by Congress both

indicate that we are moving towards the light.

The other reason why a more flexible method of regulation has now become important is drawn from the conditions under which the future growth of these industries must take place. While we may gladly concede that the market for gas, electricity, and telephone service is far from saturated, we must face the fact that further development will be attended with greater risks. This means that if capitalists are wise they will require a higher rate of return on the new capital which expansion will demand. Under present rigid methods of regulation this is likely to be denied. The rate base method of price regulation is essentially inelastic and the efforts of politicians and doctrinaires at the present time are aimed to make it more so. If new capital is to be attracted on fair terms, public utility rates must be unshackled; they must be made as responsive as is possible under the circumstances to the law of supply and demand in order that the companies may make profit enough during periods of prosperity to carry them through the following depression.

In practice this means that regulating commissions would pay much less attention to the cost or value of fixed investments and much more attention to the character of the demand. In periods of increasing demand, if the rate of growth exceeds a figure agreed upon in advance between the company and the commission, rates should be raised for the purpose either of checking the demand or, if the demand is urgent, of building up a surplus which can be invested in new plant at low prices or used to offset rate reductions in periods of reduced demand. The procedure would be reversed in periods of falling demand. Some sections of the market are more elastic—that is, more responsive to the price appeal —than others. The rates applicable to these sections would be sharply reduced in the hope of stimulating or reviving demand. A new technique of rate regulation would have to be developed to put this method of regulation into effect but it could easily be done if it were deemed desirable.[1]

It must be admitted that capital has not shown marked intelligence in making its railroad investments. Although it was obvious thirty years ago that the railroads were in a precarious position, where further development of the market would be hazardous and perhaps unprofitable, billions of new capital were poured into them. These billions we now see have been lost. In looking at the other public utilities we face the interesting question whether capital can learn from experience.

Does one generation of capitalists hand on its experience to the next generation of capitalists or does the wisdom so painfully acquired by each generation die with it?

We might state the position in this way:

To invest more capital in the railroads would be folly. Further expansion of the gas, electric, and telephone industries will probably involve more risk to capital than in the last fifteen

[1] Those who are interested will find this matter more completely covered in the author's address to The Section of Public Utility Law of The American Bar Association, October 11, 1932. (Reprinted in 57 *Reports of American Bar Association, 1932,* 793.)

or twenty years and, unless improved methods of rate regulation are adopted, it is doubtful whether capital can obtain a return sufficient to balance the risks. Therefore, until we can see the political horizon more clearly, capital should be cautious about entering this field. The outlook for improved methods of regulation is not too bright. It is well nigh impossible to review the history of railroad legislation and railroad regulation during the last generation without feeling that democracy as developed in this country has shown marked ineptitude for dealing with economic problems of any sort. Whether the nation has learned anything by experience, we do not know. But this we do know. If the present methods of public utility regulation are not made more flexible within a comparatively short time, we may conclude that *in this field* our government has not learned by experience.

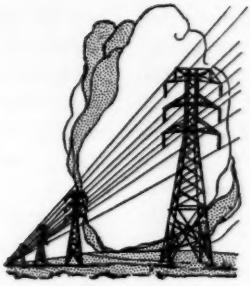
WE may hope that the investors will be wiser. They can see what rigid regulation has done to the railroads, and they can guess what it will do to the other utilities. *Caveat emptor* is a rule of law which the Federal government seeks to abolish, but it is still in full force and effect for the man who is thinking of putting his capital into a public utility or even keeping it there.

## The Real "Investors" in Municipal Power Plants

ONE of the largest and most widely advertised municipal electric "successes" in the United States has had free capital at taxpayers' expense from the very start. That original free capital has now compounded into millions. The system has never paid a penny of interest to the taxpayers from whom the capital was taken. The remaining principal of the unpaid debt to taxpayers, after some twenty years is still measured in millions. Recently a suggestion that a single one of these overdue millions be repaid to the taxpayers to be used in relieving unemployment met a curt refusal, accompanied by an impudent proposal to pay back a million a year for a while if the voters in return would authorize new "power bonds" of more than 30 times that amount.

This curious proposal has been seized upon by the powerfully organized propaganda societies of socialism, and statements have been made to the effect that this particular municipal ownership is now "able to" (the inference is that it has done it) contribute a million dollars a year for a year or two to its city for the relief of the taxpayers and the unemployed.

—George L. Hoxie
RESEARCH ENGINEER, SOUTHERN CALIFORNIA EDISON COMPANY



THE GROWING NEED OF

# Simplifying and Standardizing Rate Procedures

**The comparative stability of the costs of electric power in a world of declining price levels, states the author, may be attributed in part to the fact that the items involved in estimating reproduction cost of a utility's plant are too conjectural. Can they be reduced to practical working standards of computation? He believes they can be—and he suggests a method of procedure in the following article.**

By JOHN BAUER

UTILITY bills for the ordinary family (also for small business men and municipal use) have responded less to the forces of price reductions during the past three years than has any other important commodity or service used widely in industry and by the masses of people. They have not been subjected to rigorous deflation as have practically all other economic products and activities. This applies especially to electric service, and particularly to residential consumption.

IN 1929, prior to the depression with its cataclysmic slide of prices and even greater collapse of purchasing power, domestic electric rates were already widely recognized as too high. There was then already a strong and growing conviction that they should be materially reduced to meet the lower unit costs realized through technological developments and improvements in load conditions, and to permit realization of much higher potential consumption for great varieties of uses unattainable under the prevailing high rates.[1]

There was also recognition prior to the depression that industrial rates were generally low, and that they had

[1] According to the United States Bureau of Labor, index numbers for wholesale prices, the present average prices are about 40 per cent below the 1926 base. But this does not take into account the shrinkage in the number of dollars. This is best shown by the average decline in average manufacturing payrolls—a 64 per cent reduction from the 1926 base, according to the United States Bureau of Labor figures; here is the net decline in the current purchasing power in the hands of the mass of ordinary people.

been brought down through competitive forces. The common assumption that electric service constitutes a monopoly, does not apply to large industrial users who have recourse to other sources of power. It applies only to other groups which have no alternative supply reasonably available. It has chief significance for the residential users who must patronize a particular company or return to obsolete means of illumination, keep to human muscle power, hold to the iceman, and shut out the multitude of conveniences which depend upon low rates.

RESIDENTIAL electric rates, before the depression, were not reduced with the progress of technology and load improvements. Since the depression started, they have been modified but slightly. Rate revisions since 1929 have resulted mostly in reduction only in the higher brackets of consumption, but have left bills for the ordinary domestic consumer virtually on the pre-1929 level.

We may consider as the "ordinary" domestic consumer one who uses about 40 kilowatt hours per month. This provides for lighting and minor electric appliances, and approximates the average domestic consumption under normal American conditions. It is from the standpoint of such a consumer that the prevailing rates are here examined. On page 194 is presented a summary of average monthly bills for 40 kilowatt hours in the various sections of the country for all cities of 50,000 population and over.

These figures are based on rates prevailing April 1, 1932, and were compiled by Mr. Otto Ortlieb under the direction of Mr. George W. Page, director of the department of parks and public properties, city of Trenton, New Jersey. Only slight changes have been put into effect since; the general levels and the relative charges practically remain unchanged. Comparison of the different sections shows that the average bill varies from $3.11 per month, or 7.77 cents per kilowatt hour in the East South Central States, to $2.10 or 5.25 cents per kilowatt hour in the Pacific cities.

The variations indicate that the bills are lowest where municipal systems are the more common, and highest where municipal operation is least prevalent.

THE bills for the thirteen municipal systems average 5 cents per kilowatt hour. In a number of instances, they are considerably lower, and even in some private systems they come materially under $2 a month. This level may be taken virtually as the maximum reasonable charge for the ordinary domestic consumer under present conditions. It is difficult to see how in any city of 50,000 population or over, the total cost to the company, including a fair return on the properties used in serving the average domestic user, can reasonably exceed 5 cents per kilowatt hour. Where the bills are higher, the excess represents either failure to economize in accordance with present economic requirements, or includes over-charges beyond the reasonable cost of service and is the cost of ineffective regulation.

The standard of 5 cents may be divided into two basic elements: (1) generation (including transmission),

## The Prevailing Rates Paid by the Average Domestic Consumer in Cities over 50,000 Population

| *Territory:* | *Number of cities* | *Average monthly bill 40 kilowatt hours* | *Average charge per kilowatt hour (cents)* |
|---|---|---|---|
| New England | 25 | $2.65 | 6.63 |
| Middle Atlantic | 41 | 3.08 | 7.70 |
| East North Central | 44 | 2.43 | 6.07 |
| West North Central | 16 | 2.53 | 6.32 |
| South Atlantic | 23 | 3.02 | 7.55 |
| East South Central | 9 | 3.11 | 7.77 |
| West South Central | 14 | 2.88 | 7.20 |
| Mountain | 3 | 2.98 | 7.45 |
| Pacific | 15 | 2.10 | 5.25 |
| TOTAL AVERAGE | 190 | $2.73 | 6.82 |
| *Municipal plants* | 13 | $2.00 | 5.00 |
| *Private plants* | 177 | 2.77 | 6.92 |

and, (2) distribution. For the first, we may allow one cent per kilowatt hour; six mills for operating expenses (including maintenance), and four mills for fixed charges (including plant depreciation and taxes). We have left 4 cents per kilowatt hour for distribution—or four times the allowance for generation. This may be roughly separated into 2 cents for fixed charges on distribution properties, and 2 cents for operating expenses. This provides 12 per cent as return, depreciation, and taxes on an average distribution property value of $80 per customer, plus $9.60 a year for distribution, maintenance, and operation. It is difficult to see how higher figures can be justified on the basis of present-day necessary costs and returns on present values.[3]

In the 5-cent maximum standard, we have an approximate gauge of the

[3] These standard allowances are considerably higher than those computed by Mr. Clayton W. Pike, consulting engineer, who made a comprehensive study and report for the New York Power Authority, based principally on 1930 annual reports of electric companies as filed with the New York Public Service Commission. For an annual consumption of 550 kilowatt hours for the ordinary residential customer, Mr. Pike showed $6.35 per customer as annual fixed charges on distribution investment, and $6.65 as operation and maintenance expenses connected with distribution; total, $13 for distribution, or 2.36 cents per kilowatt hour compared with 4 cents as taken in the present study.

extent the ordinary residential consumer is over-charged in the different sections. In the East South Central cities, the monthly excess is $1.11, or $13.32 a year. But it is in these states where wages are low and where practically all conditions are favorable to low cost. A top rate of 5 cents in this territory appears excessive, and the average reduction should probably be no less than $15 per customer a year. While there is considerable variation in necessary costs as between different municipalities, conditions are not so completely dissimilar as to preclude the establishment of a general standard for convenient comparison.

We come now to the question why the rather obviously high rates have not been reduced. The answer is the lack of adequate standards or yardsticks for rate determination.

The procedure that has been established requires for every thoroughgoing rate adjustment, a physical valuation of the properties in addition to the finding of proper operating costs. A company is entitled to receive a "fair return" on the "fair value" of the properties used in the public service. Under the decisions of the Supreme Court of the United States the principal factor of "fair value" is reproduction cost at the time of the inquiry, less depreciation, and it is in this determination where the chief obstacle appears to prompt rate adjustments.

All the items involved in establishing reproduction cost are conjectural. They depend upon opinion, not definite facts. Each case, therefore, produces an inescapable conflict of interest between the consumers and the company. The latter is interested in establishing the maximum amount and is concerned in marshaling evidence to that end. Conversely, the consumers or their representatives are concerned in presenting facts to support the lowest possible figure. The commission receives the conflicting testimony, occasionally presents additional data through its own staff, and on the basis of the formal record decides what is the "fair value."

This conflict between public and private interest has appeared in every formal case since rate control has been established. The cases have appeared in successive historical swings. Before the war, there was a period of surging effort to reduce rates; the companies were then interested in prolonging and complicating the valuation process, so as to postpone reduction as long as possible. Next came the war with its rapidly rising costs, when many companies sought rate increases to avoid financial disaster, and then the representatives of the public were interested in obstructing the increases. Then came a period of relative price stability, when in some instances rate reductions were sought, and in others, increases; but in each case, there was a distinct interest on one side or the other to retard the procedure and to prevent the realization of the adjustment sought by the opposing side.

As a result of these price movements and conflicting interests, rate determination has been made cumbersome, costly, and time-consuming. This condition naturally produced reluctance to undertake

formal rate cases, and it converted the commissions primarily into courts. In some instances, the costs were piled up to heights which have stood as warning against venturing into rate cases. During the ten years prior to the financial collapse in 1929, the companies had succeeded mostly in establishing rates whose profitableness was being gradually increased through progressive economies and favorable load developments. They were glad to be let alone. The public was prosperous, or appeared so, and did not clamor greatly for rate reductions. The commissions were engaged largely in routine activities, and discouraged rate criticisms.

Then came the depression with precipitous decline in price level and disastrous shrinkage in purchasing power. For two years, there was constant official assurance that prosperity was "around the corner," and that the cruel conditions of unemployment and curtailed purchasing power were only temporary. But during the past year, the realization has come that we have shifted into a new economic era. General business recovery no longer is widely conceived in terms of return to pre-crash prices, but in terms of adjustment to a lower, near the pre-war, price level. At any rate, we are confronted with the fact that practically no reductions in utility rates have been made since before the crash. There is rapidly increasing discontent on the part of ratepayers. In many communities, the discontent has reached a stage of bitterness which does not augur well for the utilities. Political alignments have been formed with utility rates as the central issue, and the movement has even gone to the extent of boycotting utility services.

WHAT can commissions do in the face of their complicated procedure, their limited funds further curtailed during the depression, and the enormous number of instances that are pressing for rate adjustment?

Apart from revising the fundamental system of regulation so as to base rate making upon a definite cost system to eliminate conflict of interest between consumers and the company, the commissions can greatly simplify and standardize their procedure. They should modernize it to fit 1933 conditions, just as in other respects government and business have been compelled to adjust themselves to new circumstances. A procedure that was irritatingly tolerable during periods of relatively stable conditions should be adjusted to meet the requirements when there have been staggering changes in basic economic conditions.

There never was justification for the extreme detail, the infinite *minutiæ* and the protracted hearings. The

¶ "COMMISSIONS *can simplify and standardize the two fundamental processes involved in valuation:* (1) *preparation of the inventory; and* (2) *determination of unit prices. As to neither, have the commissions laid down controlling plans to be systematically followed.*"

cumbersomeness, the delay, and the expense just "growed," like Topsy, under conditions when a lackadaisical course was not wholly disruptive of public interest. During the war, however, it was the companies that felt the necessity of simplification and regulatory shortcuts to avoid financial disaster; in part they found remedies by recourse to the Federal courts. Now it is the consumer who requires quick relief, and this should be provided by the commissions themselves.

The entire rate procedure can be enormously simplified and so standardized that rate cases will not be prohibitive and virtually hopeless. Commissions possess the power to prescribe substantially the specific steps to be taken. Of course, a company must be allowed to present its own case, but that does not preclude the commission from adopting policies which will expedite the investigation, keep costs within reasonable bounds, and produce results promptly.

COMMISSIONS can simplify and standardize the two fundamental processes involved in valuation: (1) preparation of the inventory; and (2) determination of unit prices. As to neither, have the commissions laid down controlling plans to be systematically followed. A company is allowed to make its inventory largely in its own way, especially as to detail of unit subdivision or individualization. It is likewise permitted to prepare its own unit prices applied to the inventory as it pleases, particularly as to specific work processes included within the unit. Each appraisal, whether by the company, the representatives of the consumers, or the commission, proceeds without basic uniformity of classification as to what specifically is to be taken as a unit and what is to be the scope of labor and material content of the unit prices. The lead is usually taken by the company, which lays out both the inventory and unit prices in vast and complicated detail so that the time required for preparation, checkups, and cross-examination is unjustifiably long, and the cost involved is extravagant.

WHAT is needed is simplification and standardization with respect to both the preparation of the inventory and the establishment of unit prices.

As to the inventory, a commission can prevent the utterly futile presentation of minute detail. It can prescribe the classification of property and what shall constitute a unit for each class. It can fix large or substantial units of plant and equipment installed, without meaningless individualization of relatively minor parts. The object should be to keep the materials manageable and to make comparisons available as between different properties.

If there were standardization of inventory with specific definition of the units of property and with the maximum reasonable size of unit individualization, it would be quite simple in any instance to obtain the required inventory. For the most part, the facts could be taken readily from the company's records. Where special counts are necessary, they could be made without vast effort, and then kept in standardized form for future purposes. Subsequently, the inventory should be available as a matter of

## How the Commissions Can Simplify the Methods of Reporting Inventories

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record at any time for the purpose of revaluation.

NEXT, as to preparation of unit prices, there is again utter lack of standardization, largely because of the heterogeneous inventories. Each valuation involves practically an independent determination of unit price for each of the multitudinous minor items which should not be individualized at all.

If units were reasonably grouped, and if uniformity of grouping were maintained between companies, then the setting up of unit prices would be automatically simplified and in turn could be largely standardized through cost analysis. The commission could investigate and determine the kinds and quantity of labor and material required for each unit in place, and price the elements at reasonable prevailing costs; these are all matters that can be substantially standardized. When the unit cost for a particular item has once been determined, it becomes applicable for like items of all other properties. While there are differences in conditions, the variations themselves can be analyzed, and standardized adjustments applied.

When a thorough cost study has once been made as to any utility, with adjustments set up to meet differing conditions, it is then not necessary to repeat the process for each individual company. The unit prices become standardized, and can be applied to the inventories as provided in standardized form by the companies.

WHETHER a valuation is really fair, depends basically upon the determination of unit prices. This does require careful research and conscientious application to each inventory. It cannot be handled casually, and must have due regard for fundamental conditions. But it can, nevertheless, be practically administered so as to avoid dead-locking procedure and to bring a valuation to reasonably speedy determination at moderate cost.

As an illustration, consider distribution poles.

The unit price of every class of poles with appurtenances in place

should be carefully determined. Adjustments should be provided for variation in soil conditions, length of pole, and other important considerations. But when a set of unit prices with respect to poles in place have once been determined, they do not require redetermination except periodically as basic price changes may take place. The same unit prices can be applied to all the different properties that conform to the conditions for which the particular unit prices were prepared.

In any valuation, therefore, the commission would call, first of all, for an inventory to be supplied by the company according to prescribed classification. When the commission receives the inventory, it would spot check the items so as to satisfy itself as to general correctness. Then it would take the standard unit prices from the files and appropriately apply them. The expenditure of a modest sum on standardization would make possible the handling of valuations much more promptly and at much less cost than under prevailing conditions. While the system of valuation in itself is subject to serious criticism, the job can be managed by a resolute commission that will not permit itself to be defeated through ridiculous procedure.

Not only can commissions save themselves from dead-lock and perhaps consequent abolition through sensible revision of regular procedure, but they can introduce special short-cuts for temporary rates pending final determination. Except under special statutory restriction, they are not subjected to artificial limitations. They have the power to fix reasonable rates, and they are expected to proceed reasonably. They must be fair to the companies, but they are particularly expected to see that the consumers are treated fairly. In this double duty, they are permitted to proceed in such ways as may be necessary for all-around fair dealing. They can adapt their procedure to the requirements of circumstances.

Ordinarily, the basic factors in rate making change slowly, so that ordinary procedure can be reasonably applied. But when changes have been swift and sweeping, when prices drop precipitately and consumers' purchasing power melts away, then the normal course becomes abnormal—too slow to meet reasonably the fast shifting conditions.

With the great decline in price level, and enormous contraction in consumer purchasing power, the commissions can short-cut the procedure to meet the new necessities. As a temporary matter, they can promptly adjust valuations or book figures on the basis of price index numbers, can require the elimination of manifestly unwarranted operating costs, and can reduce rates in reasonable consistency with the changes in basic economic conditions. They cannot proceed arbitrarily, but neither are they tied to a leisurely course which brings injustice to consumers.

We have indicated what can and should be done to bring rates promptly in reasonable adjustments with basic changes in economic conditions. But, in view of the difficulties encountered, will any significant changes be effected?

While the need of rate adjustments is becoming increasingly manifest, municipal officials are financially pressed, and are inclined to avoid any responsibility. The commissions are confronted with greatly increased labors, restricted budgets and personnel, and traditional procedure which heads them away from rate cases. All this looks like deadlock which leaves the companies undisturbed and lets the consumers pay the bills.

Some commissions have turned hopefully to "negotiation" as a method of obtaining rate reductions promptly. So far, however, the results have been extremely meager, and substantial relief to consumers can hardly be expected without the exercise of direct regulatory power. Negotiation at best has limited application, and any considerable success can be expected only if a commission will proceed vigorously to force rate reduction if somewhere nearly reasonable voluntary concessions are not made. Where it is plain that a commission will do nothing, the companies are likely to make only infinitesimal concession which will fail to allay the discontent of consumers.

There is deadlock, but I do not believe it will last. Deadlocks are mostly temporary; they are usually broken by the dominant forces at work. The controlling economic factor is the greatly reduced price level and shrinkage in purchasing power. This bears upon all industries and upon all economic groups. It applies to public utilities, notwithstanding their entrenched positions as monopolies in important services.

SOONER or later, utility ratepayers as well as taxpayers are bound to make themselves heard. The ratepayer and taxpayer are really the same person. As a rough average, he has three to five times as much to gain from proper reduction in utility rates as from possible economies in municipal government. Ultimately, he will effectively demand relief in utility bills, which are really indirect taxes for necessary public services, just as he has already insisted upon reduction in taxes for direct municipal purposes.

Presently, municipal officials will formally demand reduction in rates. Under consumer-taxpayer pressure, they will somehow discover funds with which to prepare and present the consumer interest, and will not be awed by threat of prohibitive costs. And the commissions will find methods, perhaps such as we have outlined, by which decisions can be promptly reached; and they will probably be upheld by the courts. But possibly this forecast is too optimistic; in which case, regulation is likely to take a different direction, or in some other way, rates will be reduced.

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## The Revamping of the Commissions

*A critical survey of the reorganizations of the state regulatory bodies during the past four months, the reasons for these changes, and the trends which they portend. By* HUBERT R. GALLAGHER. *In a coming number of this magazine.*

# Remarkable Remarks

*"There never was in the world two opinions alike."*
—MONTAIGNE

FRANK R. McNINCH
*Chairman, Federal Power Commission.*

"Power is a necessity in the present state of society, and the power is a social agency, indeed a governmental agency, where hydroelectric power is involved."

GEORGE W. NORRIS
*United States Senator from Nebraska.*

"The next big national project in the way of river development may possibly be the development of the Mississippi Valley along the same lines as those which are being undertaken in the Tennessee Valley."

EUGENE TALMADGE
*Governor of Georgia.*

"If President Roosevelt will do the same thing to the Interstate Commerce Commission that I have done to the Georgia Public Service Commission we can expect to get somewhere in our effort to lower freight rates."

FREDERICK McINTYRE
*Member, District of Columbia Bar.*

"It is confusing to hear Tennessee Valley authorities tell us that the Cove Creek Dam will sink a lot of Federal money in a hole in the ground. How often have we been warned that such statements were Power Trust propaganda?"

ALEX DOW
*President, Detroit Edison Company.*

"Our utility industry is a mark for taxation just now —unjust, unreasonable, and even vindictive. . . . The way in which most of us are going to help the reverse swing of the pendulum is to make it clear to our customers that they pay our taxes."

GEORGE B. CORTELYOU
*President, Edison Electric Institute.*

"It is a strange confusion of ideas which would put commodity prices up in order to stimulate economic recovery and at the same time would put utility prices down—when the proper functioning of the utilities is necessary to the success of any recovery program."

AMOS PINCHOT
*Publicist.*

"The regulators, as the history of the utilities shows, are almost invariably controlled by the interests they are supposed to regulate. That is the reason why big business has so joyfully greeted the Industrial Recovery Act. It is fairly confident that the regulators will be open to reason."

THE UNCERTAINTIES IN THE LEGAL STATUS OF

# Temporary Rates

## PART II

**In the preceding article (in PUBLIC UTILITIES FORTNIGHTLY of August 3, 1933) the author pointed out the deficiencies of the statutes that provide for the issuance of temporary rate orders by the state commissions, and the dangers that lurked in these deficiencies both to the utility companies as well as to the state regulatory bodies themselves. In the following article the author sets forth three constructive measures that have been proposed to rectify the faults that the present laws admittedly embody.**

BY JOSEPH C. SWIDLER

ANOTHER procedure for reducing public utility rates, applicable where there has been no serious decline in a public service corporations' revenues, is suggested by the case of O'Brien *v.* Public Utility Commissioners [14] in which the court sustained a temporary order increasing the rates of a public utility by an amount sufficient to meet increased operating costs and taxes. The amount of savings in operating expenses can ordinarily be ascertained with relative ease, and a commission order giving effect to these savings, while it would not take into account lower return requirements because of declines in construction costs, would in many cases, at least, offer a substantial measure of relief.

It goes without saying that utilities are entitled to notice and hearing.[15] While commissions ought not to be required to prepare time-consuming valuations, they ought to be required to present the most complete case consistent with a speedy determi-

[14] 92 N. J. L. 587, P.U.R.1919D, 774.

[15] In the Wisconsin Telephone Case, the company in its petition for rehearing contended that the temporary order was invalid because entered without notice, the order having been entered in a statewide investigation of rates, rules, practices, services, and activities, rather than in a case specifically initiated for a temporary reduction in rates. The commission denied the petition on the ground that it was not necessary to give notice of the entry of orders. The scope of the case seems unquestionably broad enough to warrant the relief ordered by the commission, and in view of the fact that the order was not entered until eleven months after the proceeding was initiated, that extensive hearings were held, that over 2,000 pages of testimony were taken, largely dealing with rates and valuation, and that the company was given ample opportunity for cross-examination, the company's objection of lack of notice seems technical rather than substantial. In its denial of a rehearing, however, the commission took occasion to give notice that it proposed at the expiration of the initial temporary rate order to enter another order continuing the temporary rates.

nation of the proceeding, and the utilities ought to be given enough time to disclose major errors, at least. Naturally, commissions cannot allow utilities as much time as they may wish, nor permit them to present their evidence at customary length. But they can and should permit at least a preliminary check of the commission's figures, and as a practical matter seem uniformly to have done so.

IT may be urged that even though utilities are given the opportunity to cross-examine the commission's witnesses, and even assuming that the commissions are fair and competent, on an *ex parte* presentation there is always danger of error. It cannot be denied that this is true, although one should not underestimate the ability of the utilities to protect themselves against excessive rate cuts, even in emergency proceedings. They have always the bulwark of the courts, which will refuse to apply the ordinary presumptions in favor of the commission when its procedure or order is clearly unreasonable. However, there are a number of safeguards which can be set up by statute which ought to give emergency rate orders the same confidence and status as that enjoyed by other rate orders. The adoption of these safeguards would not only operate to prevent injustice, but would also tend to lessen judicial interference, and, perhaps, utility opposition.

THE first requirement which should be imposed relates to the time within which the commission must put in a full rate case and enter a final order. This requirement is sometimes imposed by the courts as a condition to denial of an injunction restraining enforcement of a temporary order.[16] It ought to be made statutory, both in justice to the company in securing a determination based on a full record, and to the consumer, since such a statutory requirement will undoubtedly operate to prevent courts from enjoining temporary rates.

The formula embodying this requirement ought, however, to be flexible, and to put a premium on utility coöperation in facilitating proceedings. One formulation would be simply to make proceedings where temporary rate orders are in effect a commission's first order of business. A more definite formulation might require that a final order be entered within a year, but that the utility and the commission by agreement might extend this period. In this way special cases, such as the telephone cases, where the records are so tremendous and complicated that a year is wholly inadequate, can be provided for. A saving clause should provide that if the old rates are reinstated because of commission delay, such reinstatement shall be without prejudice to the final order when completed.

A SECOND requirement which may well be imposed, more for the sake of completeness and as a protection against constitutional attack than for its effect on commission practice, since the commissions now uniformly observe it, is that emergency orders must be based at least on a *prima facie*

[16] See, for example, Indianapolis Water Co. *v.* McCardle (1932) P.U.R.1933B, 222, refusing to enjoin a temporary rate reduction, but requiring the Indiana Public Service Commission to enter a final order by Jan. 1, 1933.

**A Novel Proposal that Provides for the Recoupment of Losses Entailed by a Temporary Rate Order:**

*"ONE legal requirement which has been suggested is altogether novel; that provision be made for recoupment by utilities of losses suffered by reason of temporary rate orders. . . . The reasons advanced in support of this proposal are that it would serve to protect the companies against inadequate valuations and rates, and that such protection for utilities would prevent any possibility of successful constitutional attack against statutes providing for summary emergency rate procedure."*

case, with opportunity for the utility to cross-examine. It would probably not be wise to prescribe the precise type of evidence upon which the commission's case must be based but merely that its order must be reasonable and based upon the abbreviated record.

A THIRD requirement which has been suggested is altogether novel: that provision be made for recoupment by utilities of losses suffered by reason of temporary rate orders. This proposal, which originated with the Illinois Commerce Commission, is incorporated in the legislative revision submitted by the commission to the Illinois legislature. The reasons advanced in support of this proposal are that it would serve to protect the companies against inadequate valuations and rates, and that such protection for utilities would prevent any possibility of successful constitutional attack against statutes providing for summary emergency rate procedure.[17]

Commissioner David E. Lilienthal of the Wisconsin Public Service Commission has strongly advanced the proposal that in times of prosperity or good business, utilities ought to be

[17] H. B. 845; amendment to § 36 of the Ill. C. C. Act. It provides that in the case of temporary rate orders, "if upon the final disposition of the issues involved in such proceeding, the rates or charges as finally determined by said commission or the court having jurisdiction of the subject matter are in excess of the rates and charges prescribed in said temporary order, then and in such event such public utility shall be permitted over such reasonable time as the Commission shall fix, to amortize and recover by means of a temporary increase over and above the rates and charges finally determined, such sum as shall represent the difference between the gross income obtained from the rates and charges prescribed in said temporary reduction order and the gross income which would have obtained, during the period such temporary reduction order was in effect, based upon the same volume, from the rates and charges finally determined."

permitted to earn a certain amount over a fair return, the excess charge to be used to build up a depression reserve, so that in periods of depression, rates might be reduced below the fair return level and the difference made up from the reserve. This would offer immediate relief to consumers as well as stimulate business by reducing costs and releasing purchasing power when most needed. The difficulty with this admirable scheme is that it is not intended for immediate application; we must get out of the present depression before it can be applied.

THE two proposals differ very fundamentally in one respect: the Lilienthal measure is specifically intended to transfer purchasing power from boom times, when it is not needed, to periods of depression, when the need is desperate; the Illinois measure, however, is not intended for this purpose, and would serve it only in the event of a commission miscalculation as to the amount of permissible reductions. The transfer of purchasing power is a fortuitous feature, except in so far as it hastened proper reductions. In other respects, however, they have some similarities. Both tend to make rate making more flexible. Both are intended to guarantee utilities a fair average return over a long period, but the precise return (from current income) at any given time might vary with the times. The Lilienthal proposal is, of course, preferable, since it eliminates any risk, and it cannot be too strongly recommended that it be put into practice as soon as business conditions make it possible to do so. Until that time comes, however, it is to a plan like that of the Illinois commission that we must look.

COURTS have in the past been able to enjoin rate orders in good conscience, even though upon only *ex parte* affidavits, because they felt that the public was protected by the utility's bond, whereas if the affidavits were true the injury to the utility would be irreparable. Commission orders have inevitably been prejudiced by this situation, and to it may be attributed in no small degree the ease with which the enforcement of commission rate orders has been restrained. In a recent case in the Federal courts in which a temporary reduction was enjoined, the court's ruling was explicitly placed on this ground.[18] The court there said:

> "If the schedule of rates, as provided in such emergency order, becomes effective, pending final hearing, it *prima facie* will deprive plaintiff of its property without due process of law, and deny to it the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States. The injury to plaintiff will be certain and irreparable unless an interlocutory injunction is issued. If plaintiff is compelled to accept the rates as fixed by the emergency order of the commission, there is no way by which it can be reimbursed in the event the commission should finally determine that such reduction is excessive. On the other hand, plaintiff was required to, and did, furnish a bond, upon the issuing of the restraining order, conditioned for the return to the subscribers of all excess charges collected if such restraining order should be dissolved."

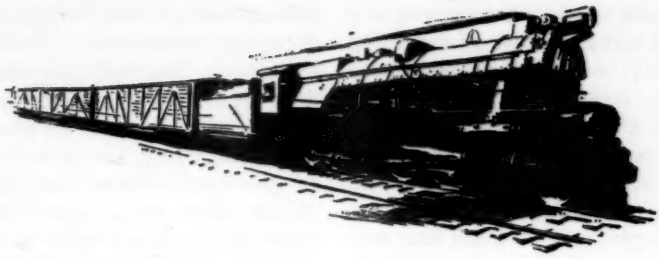
Had there been statutory provision for recoupment by the utility, it seems clear that the result would have been different, and the presumption in favor of the commission's order in-

[18] "Regulation of Public Utilities during the Depression," (1933) 46 *Harvard Law Review*, 746, 755.

dulged. Properly drafted provisions of this sort would undoubtedly be of greatest assistance in protecting emergency orders against judicial attack, inasmuch as they would tend to make abortive the allegations of irreparable injury on which injunctions are based.

If there is no early end to the depression, such a provision may raise difficult problems. Thus if a radical rate reduction were reversed by the courts, the return to the old rates plus enough to recoup the utility's losses under the temporary rates might injure both the company's customer relations and the prestige of the commission. An actual increase over the rates in force before the reduction might also cause a serious decline in consumption, which would justify a further rate increase. Indeed, often it might be the part of policy for a utility to waive recoupment rather than hazard the ill will which might result. To eliminate problems such as these, the statute should grant the commission wide latitude in authorizing recoupment, so that it might be spread over a long period, or if the utility's condition permits, deferred until better times.

Until the rules governing rate making, and particularly valuation, are simplified so that rate adjustments may expeditiously be made by final order, we shall have more and more to depend on temporary orders and emergency procedure when sudden and wide fluctuations in price levels and purchasing power require prompt rate adjustments. It is for this reason that the formulation of well-considered and comprehensive statutes governing temporary orders ought to be given prompt legislative consideration.



THE PASSING OF THE ERA OF

# Regulation by Competition

**The significance of the Emergency Railroad Transportation Act of 1933 not only to rails but also to the public utility industry as a whole.**

By KARL STECHER

THE Emergency Railroad Transportation Act, 1933, marks the end of the theory of competition in the field of rail transportation. It has long been outgrown.

The act provides for the appointment by the President of a Federal Coördinator of Transportation. He is to divide the carriers into three groups, an eastern, a western, and a southern group. In each of these three groups a coördinating committee is to be created, composed of five regular members and two special members. The regular members are to be selected by the large carriers, one of the special members by the small carriers, and the other by the independent electric railways.

The objects to be achieved under the act are broadly to "avoid unnecessary duplication of services and facilities of whatsoever nature," to "avoid other wastes and preventable expense," "to promote financial reorganization of the carriers," and to study other means of improving the conditions surrounding transportation. However, at the same time the discharge of unnecessary employees is practically prohibited. The Coördinator is, in a sense, to be the clearing house through which the objects of the law are to be achieved. It should be noted that he is to take the lead in those fields which formerly have been reserved for railroad management, his action still being subject to review by the Interstate Commerce Commission the same as though he were distinctly one of the managerial group. He does not supersede the Commission; his actions are subject to review by it.

THE course of events which has led to the enactment of the Emergency Railroad Transportation Act of 1933 has long paved the way for this legislation; it may be summarized as follows:

When the World War was over and Congress faced the task of returning the country to normalcy, it passed what was supposed to represent the crowning glory of railroad legislation —the Transportation Act of 1920. With the enactment of this law and its attendant amendments to the Interstate Commerce Act there was outlined a program which was to be the constitution for the regulation of transportation of the future. Consolidation of railroads was provided for, but the sacred principle of competition was to be preserved as fully as possible.

During the entire period of Federal regulation, from the creation of the Interstate Commerce Commission in 1887 to the passage of the Transportation Act of 1920, the railroads had possessed a practical monopoly of the transportation of the country. During all this time the stimulus to better service and lower rates was thought to lie in the competition of these carriers among themselves. It was in this atmosphere that Congress in 1920 attempted to legislate for the future.

But the country did not slowly nestle down again to the ways of the days before the war. The incentive to inventive genius and progress engendered by that otherwise catastrophe accelerated the use of the motor carrier as a competitor of the railroad, and, to a lesser extent so far, the same is true of the airplane. Many short lines of railroad and branch lines have been put completely out of business by the bus and truck. The result has been a revolution in the transportation field.

Each succeeding year after 1920 it became more and more apparent that radical changes were needed to meet changing conditions of a fundamental character. The railroads themselves as a whole clung tenaciously to the theories and glories of the past. This is not surprising, for those in control of rail transportation had grown up in the faith, so to speak, and were thoroughly imbued with the sanctity of things that were. All the time, however, conditions were changing, but neither the railroads nor Congress did anything.

With the depression becoming more and more acute it was obvious that loans from the Reconstruction Finance Corporation would not alone be sufficient to salvage and preserve an outgrown system. The necessity for economy made clear the wastefulness and folly of preserving competition in an industry essentially monopolistic in character. The theory of competition to protect the public, and the theory of public regulation to protect the public, are essentially opposed. For a long time the two existed side by side, their inconsistency apparently unnoticed. Now, however, the issue has been brought to the front and squarely met.

In a sense it may be said that the purpose of the Emergency Railroad Transportation Act of 1933 is to do away with competition among railroads. Under such a system of complete supervision and regulation as has been applied to them there has been no need for it since 1887.

It has taken the country a long time to awaken to this fact. The waste attendant upon maintaining two or three separate freight depots and two or three separate passenger depots, each

with all its concomitant facilities and each with its complete set of personnel, in a city in which one set of terminal facilities would be ample to handle all of the business of the community, has been tremendous, and the public has been paying for all this waste under the delusion that somehow it was getting better service. Of course there have been duplicate repair shops, two or three sets of lines of roadway maintained where one would have been ample to handle all traffic, and such a multiplicity of unnecessary expenses as to be ridiculous to anyone not benumbed and entranced by the old fetish "competition."

The folly of such a system as has been existing in rail transportation was long ago obvious in the field of local utilities. Practically no one today believes that there should be several different electric power companies serving the same community, each with its separate lines and poles along the streets and each with its separate power plant. No one believes any more that there should be several different sets of water mains in each street, each owned by a different company, so that the consumers may have the benefit of competition; or that such a system should apply in the case of street railways or telephones. Is it not surprising then that the idea of competition should have been worshiped so persistently in the field of rail transportation when its wastefulness and annoyance have so long been obvious in allied fields of public service?

ONE of the principal objects of the present act is to do for the railroads what was done by the telephone industry, for example, long ago voluntarily—eliminate wasteful competition. The public has had to pay for this waste. Now in the depths of an economic depression the burden has become intolerable, and stringent steps have become necessary. It was recognized by Congress as early as 1920 that consolidation was desirable and provision was made for it in the Transportation Act of that year, but the requirement that the Commission first draw up a complete plan proved wholly unworkable and a hindrance rather than a help to consolidation. The Commission itself four different times recommended the repeal of that provision because of its unworkableness, but no action was taken by Congress until the present bill was introduced.

There has been a very unfortunate tendency on the part of the uninformed to assume that the Commission is both legislative and administrative, with supreme control over all matters pertaining to railroads, and, therefore, is responsible for all sins of commission and omission in

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their regulation. It is only an administrative body, bound to carry out the laws of Congress, whether good, bad, or indifferent. No matter how persistently the Commission may recommend to Congress the repeal of objectionable legislation or the enactment of necessary legislation, the public somehow lays the blame for the situation at the door of the Commission.

The desirability of consolidation and elimination of useless duplications has long existed in the railroad field. The present depression has simply brought to light the economic inefficiency and horrible waste in the existing system. It has likewise made necessary prompt action to place rail transportation agencies on a sound economic basis.

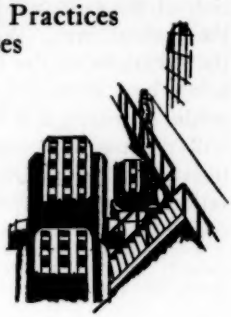
The purpose of the present law is to facilitate the accomplishment of this object.

THE whole program is unfortunately hamstrung at the very beginning by the requirement that the railroads shall constitute an eleemosynary institution for the support of unnecessary railroad employees. The theory apparently is that the railroads constitute the private melon of their employees, and they are entitled to carve and consume it without regard to the public. It is, indeed, a short-sighted policy, which will operate ultimately to the injury of the men responsible for it. It will prevent the readjustment of the railroads on a sound economic basis. Prompt reorganization along the most efficient lines would doubtless necessitate the discharge of numerous unnecessary employees, but the increase in the railroad business it would help make possible would no doubt call for the reemployment of a great number of them. This is just another illustration of placing the apparent advantage of a particular group ahead of the public welfare. The public will have to pay for it in higher freight and passenger rates, and in the retardation of business recovery.

WHETHER the present step in railroad supervision is merely temporary for the purpose of helping out in an emergency, or whether it is the initial step in the direction of complete governmental control, with the possibility of government ownership, will be determined largely, if not solely, by the railroads themselves, handicapped by the labor provisions of the present law. If they are able to effect the necessary economies and improvements themselves within a reasonable time so that prompt, efficient service will be rendered to the public at reasonable rates, the necessity for and desirability of governmental control will cease and the present policy of regulation will continue. The more efficient and economical an industry is operated the less the cry for governmental interference with it.

THAT the railroads have been the most backward and stagnant of all our major industries seems to be the consensus of opinion. The report of the National Transportation Committee, of which the late President Coolidge was chairman, points this out in most unmistakable terms. The trouble has been that railroad men have regarded themselves as guardians of a monopoly rather than purveyors of transportation. They should have led in developments in their

## The Final Abandonment of the Wasteful Practices of Duplicating Plants and Services



*"THE folly of such a system as has been existing in rail transportation was long ago obvious in the field of local utilities. Practically no one today believes that there should be several different electric power companies serving the same community, each with its separate lines and poles along the streets and each with its separate power plant."*

field; instead they have stuck obstinately to the old iron horse and to the methods of their grandfathers. The labor provisions of the present law show too that this reactionary attitude has not been confined to the managerial end.

Part of the trouble has been due, of course, to legislation unnecessarily restricting railroad activity. It should always be borne in mind, however, that one of the most certain ways to avoid undesirable regulation is to keep at least one jump ahead of the regulator. Economical, efficient service need have but little fear of undesirable governmental interference. But when a key industry such as that of rail transportation slips so far behind other industrial progress it can count on governmental action. No need for legislation of this type has been shown in other fields of public utility services up to this time.

That the present legislation will in some measure interfere with state regulation of carriers cannot be doubted. The nature of the railroad industry is such that this cannot be avoided. Efficient national regulation has been established as predominant. Inefficient, poorly paid state commissions have greatly helped in the establishment of this principle. The trend, not only in the utility field, but in every other field, has been toward the concentration of greater power in the Federal government. The more inefficient state governments are, the faster this movement will be.

THERE have been some great changes in ideas about what ought to be done with the railroads and other transportation agencies during the past several months. For example, Hon. Alfred E. Smith, as a member of the National Transportation Committee, wrote a separate report in which he stated:

> ". . . I favor the abolition of the Interstate Commerce Commission and the creation in its place of a new department of transportation headed by one man, or a one-man bureau head in the Department of Commerce determining policies with the approval of the Secretary of Commerce. What we need is a new transportation system, not endless hearings on a system that does not work."

There has been recession from this position, but Mr. Smith's idea of having one man the central figure in ef-

fecting consolidation and reorganization of the railroads is carried out in the present law. While temporarily the functions of the Coördinator will bring him most prominently to the public attention, it is not likely that he will permanently supplant the Commission as the arbiter of the transportation problems of the country any more than that was done by the Director General of Railroads during the war. His activities are in the field of management and subject to review by the Commission. His function is to assist railroad management in accomplishing what it has itself been unable to accomplish under existing law on its own initiative.

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## If You Believe the Newspapers—

ONE-THIRD of the 35,000,000 telephones in the world last year were government-owned.

* *

THE total annual distribution of directories published by the Bell System is about 26,000,000 copies.

* *

THE oldest railroad station in the United States is the Mount Clare in Baltimore; it was built in 1830.

* *

OF the 700,000 holders of stock of the American Telephone and Telegraph Company, more than half are women.

* *

TAXES paid by the electric power industry grew from $13,000,000 in 1912 to $200,000,000 in 1932—an increase of 1,300 per cent.

* *

THE river Jordan, of Biblical fame, has been harnessed by the Palestine Electric Corporation and supplies electricity to that country.

* *

TAXICABS in New York take in $150,000,000 yearly in fares and tips —more than all the other city transportation agencies combined.

* *

OF all the electric power generated for sale in the United States, about 17 per cent, representing a value of $400,000,000, is lost in transmission.

* *

BETWEEN 1913 and 1932, the total costs of Federal, state, and local government increased 367 per cent; during the same period the domestic rates for electricity declined 20 per cent.

# OUT OF THE MAIL BAG

## The Attitude of Labor toward Government Operation of the Utilities

GEORGE SOULE'S interesting article "How the Utilities Will Be Affected by the Shorter Work Week" (in the July 20, 1933, issue of PUBLIC UTILITIES FORTNIGHTLY) raises but does not answer a question which has not been accorded much attention in the public prints; namely, the attitude of labor toward government operation of the utilities.

Before the World War labor in such industries as transportation averaged 40 per cent higher in England as compared with Germany. Under the socialistic ownership of the German railways before the war, the average wage paid by that socialized system averaged $408.97 a year; since the German railways have gone back to private ownership wages have more than doubled. I speak of this fact because the socialist leaders are always pointing out how much better off the workers will be in the United States under public ownership.

The average wage on all the socialized railways in Europe will average less than half that of this nation, and what is of equal importance, freight rates are more than twice as high on those public-owned railways as they are in this nation. The same thing is true of both the telegraph and telephone systems of Europe, all under public ownership. Moreover, neither the socialized railways, nor the telegraph and telephone systems are able to make both ends meet; whatever losses they have are paid for by the workers and capitalists alike; every man, woman, and child pays the freight, no matter whether the railways are privately or publicly owned.

After the war the German government proposed to sell the railways to a private corporation, and did. But, during the discussion the *Berlin Verwarts,* leading socialist organ of that nation, said:

"In all German towns opinion is slowly going over to the surrender by the towns of the actual running of undertakings to companies. The object in view is the greatest possible de-bureaucratizing of the undertakings. Business men will be put in control. Such a change, which existing economic circumstances make absolutely necessary, signifies for the public, of course, the tendency toward the greatest possible cheapness and fullest use of economic possibilities."

In the United States the socialistic elements want more and more of state and municipal socialism, although, it is only fair to say that the socialists want this with a big IF. That "if" means that the socialist leaders realize that public ownership under the rule and domination of the old party leaders is "no good"; they all agree that there is always the danger of political management through and by the political machines.

EUGENE V. DEBBS, the most beloved socialist leader of this nation, told the writer that while he was for municipal ownership as a principle, he realized that such ownership under the domination of the old political parties would not aid the workers in the least.

"I am for it," said this greatest socialist leader "because every time we socialize a gas plant, a street railway, a water power, or the railways, we will have just that much less trouble when we get into power to take over all capitalist business."

The late Victor Berger, undoubtedly the greatest intellectual socialist leader in America, said to the writer:

"It's true that at the time when the Australian states were suffering most was at the very same time when all of Australia was under public ownership, so far as transportation, mining, gas and electric plants, power plants, and a hundred other enterprises were already socialized. So, public ownership did not aid the workers of that country."

In 1871 Great Britain socialized her telegraph system and from that time down to the present she has lost more than $300,000,000 —and I may add the fact that the workers do not use over 4 per cent of the business of that socialized system. In other words, while the middle and upper classes use 96 per cent of the service, all the people pay the losses, and the workers are taxed far more than the capitalists in this respect.

Lastly, the late Samuel Gompers, the greatest labor leader America has ever produced, said to me in Portland, Maine:

"Gordon, I stand just where you do in the

matter of public ownership. History shows, with few exceptions, that governments cannot make a success in operating any kind of business."

—F. G. R. GORDON,
*Haverhill, Mass.*

## The Power to Remove State Commissioners in Pennsylvania

REFERRING to the article by Mr. Milton J. McVean, "The Power to Hire and Fire State Commissioners," in your number of June 22nd.

I was actively engaged in the public utilities business in the state of Pennsylvania for many years and at the time of the passage of the act of 1913 creating the present Public Service Commission, I was chairman of the legislative committee of the Pennsylvania Street Railway Association and have a very clear recollection of matters that occurred at that time; the question of the removal of a commissioner arbitrarily by the governor was actively discussed and at a joint hearing before the committees of the senate and house on the bill the question was raised.

I would call your attention to the bill as introduced in both the senate and house on January 27, 1913, Art. 4, § 2, page 27, provides that the appointment of a commission of five members appointed by the governor by and with the consent of the senate, and § 15 of the same article reads as follows:

> "The governor may also remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving him a copy of the charges against him and affording an opportunity to appear publicly at the hearing in person or by counsel in his own defense upon not less than ten days' notice, etc."

This bill was reported out of committee in the house on March 27, 1913, and Art. 4, § 2, contains the same provision as to the appointment by the governor although the commission was raised from five to seven members, and § 15 of the same article contains the same provision as to removal. The bill was amended on the floor on March 27, 1913, but not with respect to either the appointment or removal of a commissioner. The bill went to conference between the two houses and the conference report which was adopted and became the law provides for a commission of seven members to be appointed by the governor by and with the advice and consent of the senate but the power of removal was changed and Art. 4, § 15, was made to read as follows:

> "The governor by and with the consent of the senate may remove any commissioner or any of the council to the commission, etc."

thus clearly indicating the intention of the senate to control the composition of the commission.

I would also call attention to the decision of the supreme court of Pennsylvania in the Commonwealth of Pennsylvania ex rel. Woodruff, Attorney General *v.* Jas. S. Benn in P.U.R.1926B, pages 524 and 525, in which the court cites Knoxville *v.* Knoxville Water Company that "such work was purely legislative in its character . . . whether . . . exercised directly by the legislature itself or by some subordinate or administrative body," and that the completed act derives its authority from the legislature and must be regarded as an exercise of the legislative power.

There are further citations of the Supreme Court of the United States and also of the superior court of Pennsylvania to the same effect. This whole decision is based on what the commission does and not what somebody calls it.

—C. L. S. TINGLEY,
*New York City.*

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*"THE thing which can shake the credit and disturb the progress of our industrial development more than anything else at this time is the menace of government competition. The main objection to such a policy is not that governmental operations are notoriously inefficient, or that it would materially increase the tax burden to be borne by all other industries, or even that it might occasion financial loss to the industries faced with governmental competition, but that it destroys the basic principle upon which the whole of American business has been built. It seeks to graft upon the political structure of America the outworn socialistic theories of the Old World, which have contributed so greatly to the troubled economic situation of Europe."*

—JOHN E. ZIMMERMAN,
PRESIDENT, THE UNITED GAS IMPROVEMENT COMPANY

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# What Others Think

## What's Ahead for the Private Utilities?

THERE is little doubt but that the utilities—particularly the electric utilities—are "on the spot," at least as compared with their sister industries. Rate revolt runs riot from coast to coast. Regulatory authorities often seem to be goaded by the pelting stones of newspapers and popular attack into either assuming the rôles of "power trust" dragon killers without regard to law or equity, or else of being driven from office. State legislatures encourage the lavish plans for tax-free, publicly owned competitive projects, while at the same time burdening the utilities with ever-increasing special levies.

The Federal government, usually a watchful guardian of private property rights, seems to be the ringleader of the attack. The 73rd Congress did its share with the passage of the Muscle Shoals bill, the shift of the Federal power tax (municipal plants exempted), and the appropriation of vast sums for "public works," some of which will undoubtedly finance publicly owned projects of a class that will compete with privately owned utilities. Now comes last minute news that the Army is engaged in a systematic pouring of oil on the troubled fires of utility rate revolution throughout the country. Newspaper reports indicate that during the first week of July demands (in each case for 10 per cent rate reductions) were made of electric and gas utilities by Army officials in Massachusetts, Nebraska, and Ohio—all of which will probably lead to the filing of formal complaints and more public agitation against the utilities.

And this in the face of the administration's avowed purpose to raise general rates of other commodities, and General Johnson's demands that the utilities prepare codes insuring minimum hours and wages for employees.

The public apparently now has a "utilities-be-damned" attitude. And where is it going to end? Will public ownership gobble up the private utilities after reducing them to unresisting and digestible pulp? Or will the utilities be condemned to the slower death by super regulation? Will it survive as a free business entity? Does it desire to survive?

ALL these questions Harwood F. Merrill, writing in *Forbes,* attempts to answer. He is hopeful that the industry will redeem itself by patient penitence for past omissions. He states:

> "The industry is now undergoing a far-reaching internal revolution which is bringing with it an entirely new attitude toward customers, toward the general public, toward the responsibilities which the industry now realizes it must fulfill.
>
> "This revolution in utility management is taking the tangible form of a new leadership. For several years, an unobtrusive shift in utility executives has been going on. The old order of officers—those who place profit, speculative gains, and the desire for power ahead of their obligations to the public—are fading into oblivion. Into their places are coming men with young ideas and the courage to carry them out, men whose qualifications are frankness, sincerity, and a sense of public trusteeship in managing the affairs of the industry.
>
> "Here and there, the acts of these new leaders are now coming to light. We hear of cases of abolition of the holding company's service charge; of voluntary rate reductions on a larger scale than ever before; of improvements in service; of deliberate leniency in collecting overdue accounts."

Mr. Merrill attempts to set forth in categorical fashion the answers which the leaders of the "enlightened" industry have to make to the public's charges:

*"The public charges:* That utilities have declared fat dividends during a period of general economic distress.

*"The utilities answer:* That dividends, on the whole, have been cut heavily.

*"The public charges:* That the spread between gross income and operating expenses is unreasonably wide.

*"The utilities answer:* That operating cost is a relatively small part of the average electric light and power company's expenses. Fixed charges—bond interest and amortization, taxes, reserves, depreciation—must be considered as expense before calculating profits. Fixed charges can be decreased only by drastic financial measures. Even then, the problem of taxes remains; and they have risen to an alarming degree in recent years.

*"The public charges:* That commodity prices have fallen for three years, without a corresponding fall in electric rates.

*"The utilities answer:* That declining commodity prices have nothing to do with the case. So large a proportion of expenses are fixed that total expenses vary little whether prices are high or low."

UNFORTUNATELY the answers, however excellent, are based on logic and logic plays a small part in the emotional resentment that places the utilities in their present perilous predicament. The editor of *Barron's* is much more pessimistic. He believes that capital may be gradually driven out of the field of public service by the withering fire of government persecution. He states:

"More than twenty-five years ago the late Woodrow Wilson stated in a magazine article that 'regulation' of public utility service in the United States would be no more than a half-way house to public ownership and operation. He did not fully develop the reasons that moved him to that statement, but whatever those reasons may have been, there is one very evident reason which amply supports his dictum. That reason is simple, though not perhaps flattering to our pride. It is, in a word, that we cannot endure to see a public utility corporation 'make money' from the public service.

"It is not the bill that the customer pays that hurts; it is the dividend that the company pays that is the real offense. This offense is, no doubt, aggregated by the misdeeds of utility managers. But had there never been an instance of 'holding company' manipulation, never an instance of 'writing up' of assets on the books, never an instance of watering capital, the main offense would be there just the same. The experience of the Potomac Power Company in the national capital proves that to the hilt. It is a perfect demonstration. There was nothing in the case but the company's profit. Rates were cut more than one half in less than ten years; each year brought a reduction, and Washington had practically the lowest rates in the country. But that would not do. The profit-sharing plan which had reduced the rates in this fashion gave the company too much profit. So it was set aside, and a new profit-sharing plan substituted which siphons the lion's share of the 'profit' to the 'public.'

"It is all, doubtless, very human, but it is also extremely real, and one cannot but wonder how long people will be willing to put money into 'public' service with notice that they cannot hope for what in all other relations would be called really fair dealing. One has but to study the atmosphere in which the Muscle Shoals enterprise is being approached to see how far the conception of that project is from such a standard. It is not too much to say of it that it amounts to a definite attempt to destroy the private utility corporation in so far as that can be done by 'unfair competition' under the thinnest possible disguise. Perhaps the only apology that can be made for its promoters is that they are not fully conscious of the 'unfairness' of their proposals, but that does not help matters much in the final event."

As if in support of this attitude, *Stock Market Finance* stated editorially on May 1, 1933:

"Whether or not rate reductions and tax increases materialize to any appreciable extent, near term outlook of utility securities must be considered highly uncertain and new purchases appear inadvisable at least until a clearer indication of tax and rate legislation is available."

—M. M.

PUBLIC UTILITIES ARE AT THE CROSSROADS. By Harwood F. Merrill. *Forbes.* June 15, 1933.

PROFITS THAT RANKLE. Editorial. *Barron's.*

ARE UTILITY PROFITS IN DANGER? *Stock Market Finance.* May 1, 1933.

¶ *"HAS Federal encroachment on states' rights and individual rights, guaranteed under the Constitution, been productive of better government or of a better people? Has it produced economy in government and has it given a higher moral tone to the citizens? The emphatic answer is NO!"*
—CONGRESSMAN RALPH A. HORR

# The Technique of Law Making for the Creation of Regulatory Bodies

ERNST FREUND was born January 30, 1864, received his J.U.D. degree from Heidelberg in 1884, his Ph.D. from Columbia in 1897, his LL.D. from Michigan in 1930, prior to 1902 was Professor of Administrative Law at Columbia, was later Professor of Jurisprudence and Public Law at Chicago, long served as a member of the Committee on Uniform State Laws for Illinois (since 1920 he was its president), was former president of the American Political Science Association, and died in the sixty-eighth year of his age October 21, 1932.

With the present volume "Legislative Regulation," therefore, is closed the long series of distinguished writings from his pen, in both German and English, which began at least as early as 1897 when his "Legal Nature of Corporations" was published. It is interesting to note that Mr. Justice Brandeis, in his monumental and probably fame-destined dissenting opinion in the "Florida Chain-Store Tax" case,[1] just printed, quotes one of Dr. Freund's later works[2] *in extenso*.

Hasty search reveals over fifty titles by Freund during merely the past twenty-four years in legal periodicals alone. No search of earlier years or other periodicals has been made, but it is practically certain that many more titles remain. In addition, the Harvard Law School library possesses twelve bound volumes by him, ranging from his massive "The Police Power, Public Policy, and Constitutional Rights" (1904), "Administrative Powers over Persons and Property" (1928), and "Standards of American Legislation" (1917) to bound brochures. There is also his 681-page case-book on Administrative Law in 1911.

We expect, therefore, in this final work on his chosen specialty, the erudition and maturity proper for a life-long student and pioneer thinker—nor shall we be disappointed.

FREUND'S particular field of law is one the very existence of which the ordinary practicing lawyer is only dimly aware, and it is a pity that writers therein should have developed a special and rather forbidding terminology which makes hard reading for such lawyers—indeed, legal readers not already initiated may find this more of a barrier than nonlegal readers, since the bothersome vocabulary consists less in the use of strange terms than in the use of familiar legal terms in strange senses. Thus the distinction between "Written Law" and "Unwritten Law" is basic for the present work. It appears in the subtitle. It forms the title of the first chapter. It is Freund's fundamental dichotomy. But to Freund (and in this he is not alone) "written law" and "unwritten law" do not mean at all what they do to the ordinary lawyer, who probably understands by "unwritten law" primarily the *mores* (in Sumner's phrase, the "folk-ways"), and secondarily, perhaps, the journalese usage to mean jury leniency toward sex-passion killings. "Unwritten law," for Freund (following an old bad usage), means any pronouncement of government through its judicial branch, even though printed. "Written law" means any pronouncement of government through its legislative branch even though (*semble*) it should be promulgated merely by proclamation of a herald or a town-crier! Not only will this use of terms derived from Roman law (for they are merely translations of *"Lex scripta"* and *"Lex non scripta,"* and with the Roman meanings) puzzle the uninitiate at the outset, but even after it is mastered it will distract attention from the *real* distinction between two different types of exertion of governmental power, one of which

[1] Louis K. Liggett Co. *v.* Lee, Comptroller of State of Florida, March 13, 1933. 53 S. Ct. 481, 500, note 66.

[2] Standards of American Legislation (1917).

is typically (not always) through the legislature, the other typically (not always) through the courts.[3]

The difficulty discussed is merely illustrative. The Anglo-American legal reader will find himself puzzled by the use of such familiar words as "the common law" and "equity" in senses new to him. Having easily grasped the fact that "declaratory" rules are those the judge makes as to the past and "regulative" rules those the legislature makes as to the future, he will flounder for a few moments when he finds himself reading of "declaratory legislation." Next he must find out for himself what is meant by the contrast-couple "Government Legislation" and "Law Legislation." When he reads that the four chief "manifestations of governmental power" are "justice, police, taxation, or the management of public property and personnel resources" he will probably have to lay his text aside to ponder before he proceeds—and that experience he will repeat again and again.

THE trouble apparently comes from three sources:

1. Being a comparatively new subject for English-speaking thinkers and writers, administrative law really required a new vocabulary.

2. The field was opened chiefly by thinkers who had been steeped in continental (neo-Roman) law and approached it from that point of view. This is eminently true of Freund, as he says himself.[4]

3. An ambition for a neat, usually dichotomous, and probably premature, classification of the subject into numerous subdivisions where no clear natural subdivisions exist. One sees quite the same sort of thing, with quite the same result, when one examines German

[3] When courts lay down a "Rule in Dumpor's Case" or a "Rule in Shelley's Case," they are legislating in every respect except the single one of point of origin. In what respect, except that, is the "Rule against Perpetuities" less legislative than the closely parallel Thelusson Act? When legislatures pass acts to reimburse individuals injured by public agents they are, in effect, adjudicating tort liabilities. Divorce by Act of Parliament was frankly the decision of a private cause. Does not the real difference lie not in "written" or "unwritten," nor even in "legislative" or "judicial," but simply in this: that there are two different sorts of things the government has to do, one being to produce rulings as to the consequences of past actions (such rulings affecting the future only so far as likely to be imitated in similar circumstances), the other being to produce rules in advance as to the effect of future actions (such rulings not affecting the past). Roughly speaking, judges do the former, legislators the latter. The peculiar Anglo-American doctrine of *stare decisis* artificially gives to the former a certain degree of future-binding effect not naturally inherent. The difference thus defined sounds small, but a whole train of consequences ensues from it, resulting, after centuries of evolution, in making each sort a quite distinct art with a quite distinct discipline and tradition. What is "Administrative Law" (in Frankfurter's sense, as explained in the text)? Obviously it is a mixture. The Interstate Commerce Commission, every public utilities commission, every "Blue Sky Law" commission, does in practice both decide past controversies and lay down time-binding rules—but with a technique, a social background, a tradition (so far as there is as yet a tradition) and a motivation quite distinct from either legislature or court—distinct, too, from the executive. But is this mixture merely a mechanical mixture or is it a new chemical compound, or is it on its way to become such a compound—and *ought* it to become such? That, it seems to the present reviewer, is a question fundamental to the whole subject. With three branches of government already familiar to us do we wish to create a fourth which for lack of a better term ("administrative" being already in use as a synonym for the executive) we may call the "bureaucratic," with a technique and a "law" of its own? Partly the question answers itself, since we have already done so—but thus far not to such an extent as greatly to touch the imaginations of the people. As this is written it looks as though swift-moving events were driving us into a rapid and sensational expansion in this direction, the effect of which on our form of government, as well as on our law and our economic and social organization, it is impossible to foresee but which must make "Administrative Law" a subject of the first importance not only to the lawyer and business administrator but to every citizen.

[4] *Harvard Law Rev.* 46, p. 170, November, 1932. "[Freund's] own ideas about administrative law were undoubtedly influenced by Goodnow, who in his turn was influenced by continental jurists and treatises."

scientific and philosophical writings.

These difficulties are dwelt upon not to discourage the reader; quite the contrary, to point out, since in any event they will be encountered, that they are but superficial impediments, easily explicable, worth overcoming. Through these portals we pass to the rich content of Freund's scholarship and thought in the field of administrative law.

So comparatively new is this field that the very meaning of the term "administrative law" is not yet settled. It may signify the "legislative" law dealing with the creation, organization, and control of administrative bodies. So (for the most part) Freund uses it. Or it may signify the law evolved by the administrative bodies themselves and the judge-made law (chiefly "constitutional") defining, limiting, and directing their functions. So (for the most part) Frankfurter and others use it. Freund himself, in what must have been nearly, if not quite, his very last writing,[5] says:

> "Administrative law has no definite content, and, under that name, no common-law status. In the reviewer's mind, it is identified with that body of principles which govern the grant and exercise of official powers and the system of remedial control by which they are checked. Those to whom administrative law conveyed something exotic and derogatory to the common law might have accepted the first half of that meaning but not the second."

With this he contrasts the following from the preface to Frankfurter and Davison:

> "Governmental regulation of banking, insurance, public utilities, industry, finance, immigration, the professions, health, and morals, in short, the inevitable response of government to the needs of modern society, is building up a body of enactments not written by legislatures and of adjudications not made by courts, and only to a limited degree subject to their revision. These powers are lodged in a vast congeries of agencies. We are in the midst of a process, still largely unconscious and unscientific, of adjusting the play of these powers to the traditional system of Anglo-American law and courts. Systematic exploration of these problems is the concern of administrative law."

The student of public utilities regulation, then, will look rather to Frankfurter and his school for discussion of the actual work of the regulating bodies and the substantive and procedural law of regulation as now being evolved by such bodies[6] and by the courts which in part control their results; but to Freund he must look chiefly for exploration of the political and legal principles governing the creation and implementing of such bodies. The present volume, which is, in effect (as pointed out in the preface), complemental to the previous "Administrative Powers over Persons and Property," is substantially a treatise on the technique of law making for the creation of regulative bodies. Naturally, therefore, its appeal is to the philosophic thinker on jurisprudence on the one hand, and on the other to the technician in the art of legislation rather than to the public utilities man direct.

But, from a large point of view, what is more important to the manager of a regulated business than to have the regulating machinery soundly planned and sensibly set up, in clear language? Now that it appears likely that very many—perhaps most, perhaps all—kinds of American businesses are to be "regulated businesses," this matter of technique takes on a vast new importance and Freund's posthumous contribution must be rated not only of practical as well as theoretical importance, but singularly timely.

—Francis N. Balch,
*Harvard Graduate School of Business Administration.*

Legislative Regulation. By Ernst Freund. New York: The Commonwealth Fund. 1932. 458 pages. $4.50.

[5] Review of "Cases and Other Materials on Administrative Law," by Frankfurter and Davison, 1177 pages, 1932; *Harvard Law Rev.* '46, No. 1, p. 167, November, 1932.

[6] See, however, in Freund's "Administrative Powers over Persons and Property," (1928), Chap. XVI, "Administrative Powers in Connection with Public Utilities."

# The Crisis in Our Transportation Facilities

OF large significance to rail transportation is the fact that not only have the railroads lost traffic during the business depression, but that throughout the past decade the volume of their traffic has not kept pace with population. Thus while in 1920 the average number of ton-miles per capita was 3,851, that figure had declined to 3,115 in 1930, and at present is much lower. Of course, the loss in rail passenger traffic since 1920 is too well known to need mention. During the past ten years the sum of $7,500,000,000 has been invested in rail securities. This represents almost one third of the total railroad valuation. Furthermore 62 per cent of total rail capitalization is comprised of funded debt, which means heavy fixed charges irrespective of gross revenues. In this connection the failure of the "fair return" provisions of the Transportation Act is now apparent and has been recognized by the substitution of a new factor in rate making in the 1933 amendment to the Interstate Commerce Act.

The foregoing facts, set forth in the recently published book, "The Transportation Crisis," by Professor G. Lloyd Wilson of the University of Pennsylvania, clearly indicate questions concerning not only the present solvency of railroad enterprises, but also the attraction of future capital sufficient to maintain an adequate rail service.

BOTH internal and external causes contribute to the railroads' plight. Among the former are complicated classifications, tariff sheets, and rate structures; services not easily adjusted to the needs of shippers; increased taxation and restrictive regulation. The latter causes include competition from other type of carriers and changes in business methods, such as hand-to-mouth buying by merchandisers.

The importance of motor competition is shown by the author's estimate that 50 per cent of all L. C. L. freight now moves by motor truck and 10 per cent of all freight. (Accurate data are lacking.) The author points out an investment in highway transport facilities of $28,000,000,000, thus surpassing rail investment, but it should be remembered that this figure includes the cost of highways and private motor vehicles. Hence it is scarcely comparable to rail common carriers. Also only 4 per cent of highway mileage has better than minimum surfacing suitable for speedy or heavy transportation.

In analyzing the growth of motor transportation mention should be made of speedy, overnight carriage up to 300 miles; flexibility of service; special inducements, such as long credits (which railroads may not grant); convenience, such as easy packing rules and door-to-door service; and low rates. The tendency toward longer motor hauls is noted.

PROFESSOR Wilson omits a few omissions of outstanding court decisions in his discussion of regulation of motor carriers. While he illustrates the difficulty of state regulation of contract carriers by citing Michigan Pub. Utilities Commission *v.* Duke, 266 U. S. 570, 69 L. ed. 445, P.U.R.1925C, 231, he makes no reference to Stephenson *v.* Binford (1932) 287 U. S. 251, 77 L. ed. 288, P.U.R.1933A, 440. The latter case breaks new ground in the field of regulation by holding that a state may, under a properly drawn statute, regulate the minimum rates of contract carriers by motor. The case shows the importance of distinguishing between contract and common carriers in imposing regulatory requirements. This overcomes the obstacle on which the Florida law was held void in Smith *v.* Cahoon, 283 U. S. 553, 75 L. ed. 1264, P.U.R.1931C, 448, which case the author does not mention.

The Stephenson Case is also epochal in that it bases the decision squarely upon the police power of the state to control the use of its highways and puts aside questions of guaranties under the Fourteenth Amendment. The court

did not adjudicate whether the appellant contract carrier was conducting a business affected with a public interest by hauling freight under private contracts with named shippers; nor did it pass upon the insurance provisions of the Texas statute because these had not been enforced at the date of the suit. But the decision plainly upholds the state's authority over the use of public highways and goes as far as saying that "generally at least" the legislature may prohibit or condition the use of highways for gain as it sees fit. It is implied that the state may, through the police power, enforce a proper allocation of traffic between motor carriers and railroads in order to alleviate highway congestion and promote safety. No question of interstate commerce was involved.

Regarding the state's lack of power to require contract carriers to assume the duties of common carriers as cited by the Duke Case, it would have been more appropriate for the author to have cited Frost *v.* California R. Commission, 271 U. S. 583, 70 L. ed. 1101, P.U.R.1926D, 483, since it is a later decision and because the Duke Case involved interstate commerce. Furthermore the statement (on page 166) that the states do not have power to require bona fide interstate common carriers to conform to state laws governing intrastate common carriers needs qualification. A state may impose the same safety regulations upon interstate carriers if such are reasonably necessary for safety. It may also levy a license fee on interstate carriers if necessary for and actually applied to the expense of safety regulation. (See Sprout *v.* South Bend (1928) 277 U. S. 163, 72 L. ed. 833.)

With water-borne commerce, government competition, either direct or indirect, is of much importance. The Inland Waterways Corporation is the largest single factor in river traffic, but its operations have produced chronic deficits. Does this indicate governmental inefficiency or that river traffic in present circumstances is inherently unprofitable?

Professor Wilson believes that a planned transportation system in which each type of carrier will be assigned a place is feasible. He proposes an investigation to determine the relative efficiency of each type of transport agency with respect to different commodities and different kinds of services. Regulation of all forms of interstate carriers would devolve upon the Interstate Commerce Commission, thus superseding our present patchwork regulatory system. The burden of taxation should be more equitably apportioned. On this point, no specific suggestions are made concerning legal difficulties as between interstate and intrastate operations.

Coördination should be worked out between railroads, motor carriers, vessels, and electric railways, to the end that duplicate equipment and services may not increase unit haulage costs. There appears to be some inconsistency in other proposals that the railroads inaugurate additional classes of freight and passenger service. Also the proposal of fixed differentials between rail, water, and rail-water rates seems impractical—at least to any great extent. Not only are rates influenced by volume of traffic and that varies from time to time between carriers, but also the Interstate Commerce Commission must in actual rate regulation consider numerous economic and legal factors other than costs of service.

The author's statement that the interests of all types of carriers and the public are identical is subject to some qualification. It should be remembered that the railroad investment in specialized capital goods is a present fact; since there is an admitted surplus of all kinds of transport facilities any diversion of traffic to other carriers impairs the ability of railroad companies to earn a fair return. Since the author alleges quite a few points of superiority of motor haulage as compared to rail movement, it follows that on the relative efficiency theory that type of traffic should go to the motor carriers. Also he points out the tendency to longer motor hauls.

Further diversion of traffic from the railroads will endanger the payment of even their fixed charges unless rail rates be increased. The former is not to the interest of railroads, and the latter is not to the interest of the public. In this dilemma the author might have mentioned the possibility of revision of railroad capital structures either through equity procedure or under the recently enacted amendment of the Bankruptcy Act.

—HOWARD B. WILSON

THE TRANSPORTATION CRISIS. By G. Lloyd Wilson. New York: Sears Publishing Co. $2.50. 334 pages. 1933.

## A Practical and Timely Manual on Federal Procedure for Utility Lawyers

UNTIL questions of Federal court jurisdiction in utility regulation were thrust so sharply into the arena of public controversy, executives and economists were generally content to leave such complicated matters to their brethren of the legal profession. Under the prevailing atmosphere, however, the decision to make an appearance in a Federal court often involves such an important effect upon a utility's public relations, that alert utility executives are well advised to attempt some general understanding of the procedural rights and limitations of utilities in Federal courts. Likewise, laymen whose duties may sometime place them in a position of opposing utilities (such as mayors, utility commissioners, or other municipal or state officials), would do well to give some thought to the rules which control the highly controversial procedure of getting into—or staying out of—the Federal courts.

This suggestion is made with all due respect to general ability and sound discretion of utility counselors and city or state attorneys whose primary duty it is to take care of such matters. It is not merely a question of whether one's lawyer knows his business; it is the more serious question of whether the purely legal steps which he has taken or is about to take may not involve extra-legal complications which overshadow the procedural advantages which he has in view. A practical working knowledge of such matters is of particular value at this time.

BROWN'S "Guide to Federal and Bankruptcy Practice" is obviously intended by the publishers for lawyers. To them we recommend it without hesitation as being one of the most handy, concise, and up-to-date single volumes on the subject which he could have in his library. But we can go further and recommend it to all laymen whose business or professional duties require them to interest themselves in Federal litigation. It is the first book of its kind which we have seen that can be readily understood by the layman. Nor does that imply any superficiality of style. Mr. Arthur March Brown, of the Boston bar, has performed the unusual job of writing a law book in plain English language, entirely free from the obscure, and often confusing style of orthodox legal literature.

Among the points which Mr. Brown covers effectively is the jurisdiction of the district court, when one can get into it, and how one can get out of it. Diversity of corporate citizenship, receivership procedure, suits to restrain state commission orders, venue, and service of process—all these fussy and troublesome little details of Federal procedure are briefly but thoroughly covered with pertinent citations of authority. After reading it, one knows just where he stands with relation to the Federal courts. One will also know what his lawyer is driving at when discussing some strategy of rate litigation. It is surely a book that utility lawyers have long waited for and one which their

employees and opponents could refer to with much profit.

Of particular interest is the treatment of the bankruptcy law as revised by the recent lame duck 72nd congressional session of unhappy memory. This enactment (March 3, 1933) imposes some radical changes upon the organic bankruptcy law, especially the section (77) permitting railroad reorganizations. There are rumors that this section will be extended to include municipal corporations, in which event it should be of peculiar interest to utility and government officials. For the practicing attorney there are provided a number of forms for Federal proceedings, both at law and at equity. The book also covers admiralty, appellate and criminal procedure in Federal court. It is well indexed and has a very complete table of contents; as a whole it constitutes a valuable contribution to the literature of regulation. —M. M.

GUIDE TO FEDERAL AND BANKRUPTCY PRACTICE. By Arthur March Brown. Albany, N. Y.: Matthew Bender & Company, Inc. 1933. $10.00.

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# The Attitude of the Supreme Court toward Industrial Regulation

WHILE well-informed citizens throughout the country are wondering whether the National Recovery Act and other emergency legislation passed by the 73rd Congress will hold constitutional water, the New York Court of Appeals handed down a decision sustaining the milk regulation statute of that state which may very likely point the way that the National Recovery Act will follow when and if it is brought to the highest court.

The New York statute regulates milk just as a public utility. The court held that there exists an "emergency" justifying temporary regulation of the dairy industry by the state so long as such emergency continues. The case will likely go to the United States Supreme Court, and thereby evoke a valuable precedent by which the legal validity of the National Industrial Recovery Act will probably be judged, since that Federal law is, after all, the extension of this "emergency" theory to all other lines of industry.

The National Recovery Act is likewise limited to a definite period. The Supreme Court has held before that emergency conditions can exist so as to justify state regulation, for a temporary period, of private business that could not be constitutionally regulated all the time, as regular public utilities are.

However, Professors Tugwell and Moley and other economic planners who now have the President's ear have indicated that they believe that the regulation of all industries should go on permanently, even after the expiration of the temporary period specified in the law itself. This will present a delicate question, indeed, about two years from now, if it is attempted. Can the Constitution be stretched sufficiently to cover the whole new group without weakening the force of that document as a whole? Or will the court balk and demand a constitutional mandate from the people? The editor of *Barron's* believes that such stretching will be an example of the old saying among lawyers, "hard cases make bad law." The editorial stated:

> "As the New York Court of Appeals acknowledged, the (milk) law abridges the freedom of contract and undertakes to repair the economic status of a single industry, but it justifies these legislative ambitions on the ground of an extraordinary emergency. What might happen if the milk industry came under Federal code control and the Recovery Administration differed with the New York Milk Board as to fair prices in that state is as yet, fortunately, not a practical question. But state price-fixing has begun, and Federal price-fixing is on the statute books. Indeed, the Agri-

> cultural Adjustment Administration has intimated that it will assume jurisdiction over the cows. Hamilton, Jefferson, and Chief Justice Marshall must all be turning in their graves. Not only hard cases but also hard times have something to do with shaping the law as it is handed down to us."

MR. Paul Y. Anderson, writing for the liberal weekly, *The Nation*, is short on ideas about the constitutionality of such a permanent regulatory program but long on threatening predictions about what will happen to the court if it does defy the President by vetoing his program. Mr. Anderson states:

> "It is often and pertinently asked what the United States Supreme Court will say about the constitutionality of some of the Roosevelt measures. Certainly there are at least three reactionary old men on that bench who would take profound satisfaction in standing by their plutocratic concepts of society if they knew the mob was battering at the door, and there may be more than three. That eventuality already has been seriously considered here by persons interested in the success of the new deal. There are ways of meeting it. Congress could pass an act requiring members of the court to retire upon passing the age of retirement. That would remove two of the worst. It would also remove the best, Justice Brandeis, but that could be met by a provision enabling the President by executive order to extend the tenure of designated justices who had reached the age limit. Or the size of the court could be increased by law to permit the appointment of additional justices whose ideas developed subsequent to the year 1880. It has been done. If this reporter knows anything about the temper of the present administration, it will never permit the whole economic structure of this country to be disrupted and demoralized because less than a half a dozen dyspeptic old men are determined to uphold precedents established before the invention of the telephone. As has often been made clear on these pages, I do not relish these encroachments of the executive upon the prerogatives of the other branches, but sometimes a condition arises which must be dealt with."

Mr. Anderson probably is so much carried away with his zeal for the New Deal that he did not seem to realize that the rather incredible suggestion with which he sympathizes is not only bad government, but rather bad morality judged by the accepted standards of justice. It amounts to little more than a barefaced suggestion that the President should pad the court to suit his purpose. Why go through such a mockery of justice at all? Instead of loading the bench with "yes men," it would save embarrassment to both the court and the President to do away with the meaningless gesture and declare the judicial branch of the government no longer supreme in matters of law enforcement—for unless judges can be free and independent in the use of their judicial discretion, resulting judgments are of little weight anyhow.

Mr. Anderson also seems somewhat presumptuous in stating his own opinion as an established fact that Justice Brandeis is the best of the present bench. This reviewer yields to no one in his personal admiration of the brilliant intellect, legal learning and personal integrity of Justice Brandeis, but he feels that a whole bench full of Justices Brandeises would be just as unfortunate as a bench full of Justices Butlers or Sutherlands. The Supreme Court is and has always been an admirably well-balanced tribunal. It needs no defense from anyone. Its record in preserving our constitutional freedom through present and past storms is such that the vast bulk of our citizens would probably far rather leave the final say-so in our laws to these "dyspeptic" old gentlemen than with a majority vote of Congress.

Critics of the court so frequently lose sight of the fact that it never condemns laws to death; at most it merely says that certain laws are incompatible with the prevailing state of the Constitution. The people—who are the final judges—may always change the Constitution to embrace any worthy legislation. That they are not sufficiently interested to do so is the best evidence in the world that the law cannot be so awfully important after all—or else—democracy is a failure and the people are unfit to govern themselves.

—F. X. W.

HARD CASES AND THE LAW. Editorial. *Barron's*. July 15, 1933.

IF THE SUPREME COURT OBJECTS. By Paul Y. Anderson. *The Nation*. July 19, 1933.

# The March of Events

## Army Seeks Lower Utility Rates

WHAT amounts practically to an ultimatum to public utility services throughout the country to reduce rates 10 per cent has been ordered by Assistant Secretary of War Harry H. Woodring, former Democratic governor of Kansas. Purporting to act in the interest of governmental economy but with a view to bringing relief to household budgets throughout the nation, Woodring has dispatched orders to all corps area commanders to serve notice upon the public utility services that war department contracts for such services will not be renewed for the fiscal year 1934 unless a 10 per cent reduction in rates is granted.

In the event the utility services refuse to make such a cut, the corps area commanders have been instructed to petition the appropriate state agency charged with control of such rates for the reduction. In states which have no public utility commission, the petition will be made direct to the company. Woodring has not yet decided what action will be taken other than to cancel contracts if the companies refuse to grant the reduction. He is confident, however, that the state commissions will order the reduction once the war department petition has been received. The wording of the petition is being left to each corps area commander.

## All Public Utility Workers Will Come under the NIRA Code

THE NIRA blanket code agreement opens the way for shorter hours for railroad and all other public utility workers, according to a news item in the Washington (D. C.) *Daily News* of July 26th. Administrator Hugh Johnson said on that date that public utilities were included. And, although Railroad Coördinator Eastman is unwilling to interpret the covenant as it applies to railroads, some of the unions are already seeking a ruling which would help to reëmploy some of the estimated 700,000 jobless railroad workers.

Reports are current that a specific exemption of steam railroads from the blanket code, included in an early draft, was eliminated before its approval. This strengthens the railroad workers' argument.

On the other hand, Administrator Johnson is still considering whether signature by employers to the code will obligate them to release their men from labor contracts pledging more than thirty-five hours of work a week, and to pay them just as much for the shorter period.

Thus the blanket code may be the means of railroad employees getting the 6-hour day, about which there has been so much agitation during the last few years.

An effort was made while the rail coördination bill was before Congress to legalize the 6-hour day, but the proposal was eliminated.

Coördinator Eastman points out that railroads were given relief in a special law, the coördination act he administers. The conclusion of some from this is that Congress did not intend the NIRA to concern itself with steam carriers. Others think, however, that Congress had no such intention.

## New Head for Federal Power Commission

ACQUIESCING in the desire of President Roosevelt to have a man of his own selection as chairman of the Federal Power Commission, George Otis Smith vacated that post on July 19th to make way for the appointment to the chairmanship of Frank R. McNinch. Chairman McNinch, a Democrat, who has been vice chairman for several months since the Democratic victory, said shortly after his appointment by President Roosevelt that "no honestly administered power company has anything to fear from this commission, but crooked ones would do well to make straight their paths."

Commissioner Smith's resignation was only as chairman, but it was expected in authoritative circles that he would leave the commission entirely within the next ninety days.

## Publicly Owned Plants Will Receive Federal Loans

ACCORDING to special Washington dispatches printed in various antiutility papers throughout the country, such as the *Capital* (Wis.) *Times* of July 24th, advocates of government ownership of utilities have a ready listener to their plans for Federal loans and subsidies to embark upon local enterprises to compete with established private utilities in the person of Harold Ickes, Secretary of Interior, and dispenser of the $3,300,000,000 made available for public works by the National Recovery Act.

These advocates had feared that the Federal administrator of the public works fund might limit his activities and scope so as to block the hopes of municipalities which are desirous of borrowing Federal money for the construction of electric power, light, and distributing systems.

But it is said that Administrator Ickes has ruled otherwise. Several Wisconsin cities are believed in the list of prospective borrowers, either for construction of new or improvement of old light plants. The new administrator has already gone on record in his personal capacity as being in favor of making such loans, when towns and cities applying for them meet the board's regulations. The board has already outlined its policy toward municipal loans by stating that towns and cities may receive grants up to 30 per cent of the costs of construction and borrow the remaining 70 per cent from the board.

The conditions attached to such loans are that a genuine need be shown for the improvement or project and that municipal budgets shall be in a sound condition. The period of amortization in such projects shall in no instance exceed thirty years.

Municipal ownership advocates have pointed out to Secretary Ickes that a policy to bar loans for public lighting plants would work untold injury to the plans of many Southern towns already planning to erect their own distribution systems and buy energy from Muscle Shoals or build their own power stations

## Valley Engineer Would Tax Idle Machines

An engineer who believes that the Federal government should tax idle machinery so that industry cannot charge it against operating expenses was recently appointed to the staff of the Tennessee Valley Authority. He is Dr. Walter N. Polakov, technical expert who has started a study of the proposed transmission line from Muscle Shoals to Cove Creek. His home is in New York; he is fifty-four years old, and was born in St. Petersburg, Russia, the son of an official of the Imperial Russian government.

Dr. Polakov headed a special committee of the Society of Industrial Engineers which reported some months ago recommendations on wage increases and reduction of hours similar to provisions of the new Recovery Act. Dr. Polakov was quoted as saying that an indirect tax which would tend to drive idle machinery out of existence and make further investments in unnecessary plants and equipment unattractive to capital can be imposed under the law. The administration could refuse to recognize carrying and other charges on idle equipment as a legitimate part of operating expenses. He stated that a plant with 100 machines, 50 of which are idle, has no more right to include the expense of owning idle machinery in the price of its finished product than has the owner of a 2-family house to charge double rental to one tenant because his other apartment is vacant.

## Mississippi Valley May Be Next Governmental Project

The next big national project in the way of river development is likely to be the development of the Mississippi valley along the same lines as those being undertaken in the Tennessee valley, according to John Snure, writing in the Des Moines *Tribune*. This would mean the development of the Mississippi valley for purposes of navigation, power, flood control, and with a view to agricultural and industrial improvement and would involve a task far greater than the one which has just been entrusted to the Tennessee Valley Authority.

According to Mr. Snure, attention to the matter has been directed by Senator George W. Norris. Returning from an inspection of the St. Lawrence river, he made a statement describing benefits of the St. Lawrence project to both middle west and to New York state. Senator Norris then took occasion to dwell on the possibilities of improving the Mississippi after the manner proposed for Tennessee. This is not the first time the Nebraska Senator has spoken of it—he treated of the matter last spring in a speech in the Senate.

## Fair Ship Rates Ordered by Shipping Board

Exercising for the first time the powers granted under the intercoastal act, the Shipping Board on July 22nd ordered all lines engaged in the Atlantic-to-Pacific trade to "voluntarily place their rates in line with rates recognized as fair and reasonable."

The board also said it contemplated suspending rates on many commodities charged by "certain" of the fifteen common carriers involved and which it held were threatening a disorganization of the trade. The action was taken under the law passed at the recent extra session requiring the filing of rates with the Shipping Board and authorizing that body to suspend unduly low charges.

The last rate conference agreement before passage of the intercoastal act expired March 31st, and at that time all but three of the lines operating between the East and West Coasts by way of the Panama Canal were lined up under the uniform rate agreement. Big shippers in advocating the new law said recent rate wars had cost ship owners about $10,000,000.

# Alabama

## Telephone Rate Hearings Slated

ACCORDING to the plans of the state commission announced on July 19th it will begin its hearings on the citation against the Southern Bell Telephone & Telegraph Company on September 6th either in Birmingham or Montgomery. The announcement followed receipt by the commission of a letter from President M. L. Robertson, of the Alabama League of Municipalities, to the effect that the date was satisfactory to his organization. The citation, originally set for hearing June 6th, was postponed pending disposal of the Birmingham Electric Company rate case. The Southern Bell Telephone & Telegraph Company was directed in the citation to show cause why its rates and charges in Alabama should not be reduced.

The Alabama League of Municipalities, representing most of the cities and towns in the state, and many of the municipalities, has interceded in the case demanding lower telephone rates.

# Arizona

## Governor Appoints New Commissioner

GOVERNOR B. B. Moeur has announced the appointment of John Cummard, of Mesa, to succeed Amos A. Betts, resigned, as a member of the Arizona Corporation Commission, according to the *Gas Age-Record* of July 22nd. Wilson T. Wright, of Globe, member of the commission since last January, has been chosen chairman to succeed Mr. Betts. The third member of the commission is Charles R. Howe.

# Colorado

## Dispute over Commission Chairmanship Ended

GOVERNOR Ed C. Johnson took the final step in ironing out a nasty political situation in Colorado when he reappointed Worth Allen as chairman of the state public utilities commission. The appointment came after Otto Bock accepted an appointment on the Denver district bench to replace Judge E. V. Holland, who was elevated to the supreme court. Judge Bock was appointed to the public utilities commission last spring during the session of the legislature. The senate first voted to confirm the appointment and later reconsidered and voted against confirmation.

Bock had already started suit in the Denver District Court to force Chairman Allen to turn over to him the position on the commission, but the suit was ended when he was named to the district bench. Mr. Allen's appointment as chairman of the public utilities commission for six years must be approved by the state senate.

# Georgia

## Governor Ousts Commission and Names New Board

GOVERNOR Eugene Talmadge on July 21st, according to the Atlanta *Constitution*, suspended all five members of the Georgia Public Service Commission, appointed new commissioners in their places, and announced that the appointees would carry out his platform pledge to reduce utility rates.

In a lengthy statement, the governor found the former commissioners guilty of various charges, holding that they had sanctioned excessive electric rates, had made no effort to cut telephone charges, and had shown "incompetence and total ignorance" of the laws governing railroad freight rates.

The governor revealed that he expects the new commission to reduce utility rates when he said that he felt certain "that all of the appointees agree with his position that rates are too high in Georgia."

Jud P. Wilhoit, of Warrenton, who resigned as a member of the state highway board to accept the appointment to the commission, was named to succeed James A. Perry, and was immediately elected chairman. Others named by the governor were Alderman Ben T. Huiet, of Atlanta, to succeed Jule W.

Felton; J. B. (Tobe) Daniel, of LaGrange, to succeed Albert W. Wodruff; George L. Goode, of Carnesville, to succeed Walter R. McDonald, and T. K. Davis, of Meigs, to succeed Perry T. Knight.

Following the law, the governor suspended the commissioners until the next session of the legislature in January, 1935. Under the statute the case will be reviewed by the legislature. If the governor's action is upheld the ousted commissioners will be officially removed. If not they then will be restored to office.

Former Chairman Perry, in a letter to his successor, Mr. Wilhoit, revealed that he would immediately institute *quo warranto* proceedings in an effort to retain his position. Mr. Perry also issued a public statement denying the charges against him, and Mr. McDonald said he would carry his case before the people. Mr. Knight and Mr. Felton, though they refrained from issuing statements, said they felt that they had done their duty despite the findings of the governor. Commissioner Woodruff is still confined to the hospital as the result of his collapse during the hearing.

The new commission was sworn into office immediately and discharged all employees of the old commission, including Robert Springfield, secretary; E. M. Price, rate expert; and J. Houstoun Johnston, consulting engineer.

Jack Forrester, of Richland, was named successor to Springfield and it was understood that Curtis B. Mees, Charlotte (N. C.) engineer, was to be named rate expert. No selection for the post of consulting engineer has been made.

In a lengthy statement announcing the removal of the commissioners, the governor reviewed the findings of his recent three weeks' inquiry into their official conduct and gave specific reasons for the dismissal of each of the five commissioners.

In public statements made by former Chairman James A. Perry and former Commissioner Walter R. McDonald, the governor was openly charged with prejudice in conducting the ouster hearings, for which it was said there was no constitutional warrant.

At its first session, the new commission elected Mr. Forrester secretary and chose Mr. Wilhoit as its chairman. At a second session held in its own offices, the commission rescinded an order of the old commission permitting members to ride on railroad and bus passes.

Chairman Wilhoit said another meeting of the commission would be held soon.

Mr. Huiet, who came from Fort McClellan, where he is attending a national guard camp, said he would resign immediately as alderman. Under the law he could hold both posts but he said he planned to devote his entire time to serving the commission.

Jack C. Savage, Atlanta attorney who directed the presentation of evidence against the old commissioners for the Georgia Federation of Labor and the Atlanta Federation of Trades, said the governor "took the only course open to him under the circumstances."

In his ouster order, the governor quoted the Biblical admonition of Moses that "a gift doth blind the eyes of the wise and pervert the words of the righteous." He said four members of the commission, Mr. Felton, Mr. McDonald, Mr. Knight, and Mr. Woodruff, were "guilty of riding on bus and railroad passes," and that Chairman James A. Perry, of Atlanta, said he once made a bus trip without paying a fare.

## New Board Plans Immediate Rate Slashes

IMMEDIATE action looking toward downward revision of electric, railroad, and telephone rates will be launched by Georgia's new public service commission, it was learned authoritatively on July 22nd by the Atlanta *Constitution*. The new board, headed by Chairman Jud P. Wilhoit, of Warrenton, was to meet the following week to map its plans and it was definitely established that the first action of the group will be to eliminate as speedily as possible all emergency freight rates and a movement launched to cut electric and telephone rates.

The commission at an early date is also expected to act on the gas rate case which was pending before the old commission when it was suspended by Governor Eugene Talmadge. Likewise, the Atlanta Federation of Trades' application for lower street car fares will be looked into thoroughly as soon as the commission gets settled.

That rate schedules were to be attacked almost immediately was made certain when Governor Talmadge reiterated that he felt the prevailing schedules were too high, coupled with the fact that the governor sounded out the views of all of the new appointees before he issued them their commissions.

Railroad rates are to be given first treatment because of present emergency charges and because some sort of revised valuation of the properties of the various power companies operating in the state will be necessary before a revision of electric energy schedules can be ordered. With the present valuation of the commission it will be impossible to fix lower rates as any reduction would not bring the power companies the fair return permitted by law.

Curtis B. Mees, Charlotte engineer and rate expert, who aided in compiling the data for Governor Talmadge which resulted in the removal of the old commission, is expected to be named rate expert of the board to succeed E. M. Price, and to take charge of the new valuation appraisals.

# Illinois

## Commission Slashes Electric Rates

RATE reductions for electricity which will save downstate consumers an estimated three quarters of a million dollars a year were ordered by the Illinois commission on July 18th. The Illinois Power and Light Company was ordered to reduce its rates 10 per cent and the Central Illinois Light Company was directed to make a 15 per cent reduction, effective August 15th. This was the biggest slash in rates made by the Illinois commission since it announced its rate-levelling campaign.

The rate cut demanded of the Illinois Power and Light Company will work a saving of half a million dollars to consumers in 367 Illinois communities, including Jacksonville, Bloomington, Champaign, Urbana, Danville, Decatur, Belleville, Edwardsville, and others. A quarter of a million, it was estimated, will be the saving to consumers of the Central Illinois Light Company in Peoria, Pekin, and four other Illinois towns.

On July 13th the Illinois commission ordered three other public utilities, the Peoples' Power Company, the McHenry Light and Power Company, and the Western United Gas and Electric Company (northern division), to reduce rates for electricity. James A. Mathews, chief engineer for the commission, said patrons of the Peoples' Power Company would save approximately $204,000 annually, including the Federal tax.

# Indiana

## Municipal League Establishes Utility Section

REPRESENTATIVES of more than a score of larger cities of the state of Indiana, where utilities are publicly owned, went on record in convention at Richmond July 13th as favoring organization of a utility ownership section of the Municipal League. A number of towns where distributing systems are owned publicly joined in the vote to establish the section. The organization is to be known as the "Municipal Utility Association." It was ordered that a standing committee be named by Dr. Thomas E. Cooksey, mayor of Crawfordsville, president of the Municipal League, and that these committees operate at once so that a showing of progress could be made at the meeting of the entire league at Bedford in September.

Committees to be named by Dr. Cooksey will include the following: executive, publicity, membership, production, distribution, meters, purchasing, new business, safety, legal, legislative, and engineering.

As the result of current agitation for municipal ownership of utility plants in Indiana, it has been estimated that three cities Brownsburg, Evansville, and New Albany, will shortly take steps to establish municipal plants.

# Louisiana

## Utility Concerns Ordered to File Fiscal Reports

ALL utility companies in Louisiana were ordered on July 21st at the close of a 5-day meeting of the Louisiana Public Service Commission sitting in Mandeville to submit reports showing decreases in income, labor costs, operating expenses, and rate reductions during the last six months. The reports will be studied by the commission and referred to national authorities in Washington, it was announced, following a lengthy conference which was held at the request of Harry H. Woodring, Assistant Secretary of War, with the object of reducing public utility rates by 10 per cent.

Representatives of utility companies attended the conference with the public service commissioners, which was presided over by Chairman Harvey G. Fields. Francis Williams, commissioner for the first public service commission district, was also present.

The commission in adjourning completed disposition of a docket of 35 cases, including that of rates on compressed cotton, and electric rates on cotton gins.

# Massachusetts

## Regulatory Changes Considered by Legislature

UNDER an order adopted by the senate the possibility and expediency of prohibiting service charges in domestic consumption of electricity and gas will be investigated by the Massachusetts Department of Public Utilities, according to the *Electrical World* of July 15th.

A bill sponsored by the late Representative Joseph A. Logan of Hyde Park, directing the Dedham & Hyde Park Gas Company to purchase its supply in the open market, rather than from its fellow subsidiary, the Worcester Gas Company, was defeated on July 15th in the senate after passing the lower legislative branch. The vote was 16 to 20. Senator Angier L. Goodwin of Melrose, chairman of the legislative committee on power and light, spoke against the bill, saying that it would be bad policy for the general court to attempt to fix utility rates without the services of the state department of public utilities, which he felt was the only body competent to establish them.

Following a lengthy debate on July 18th, the senate passed a bill to place motor trucking companies under the supervision of the state department of public utilities. The bill was passed by a rising vote of 16 to 10.

One of the first bills to be considered by the next session of the legislature will be a proposal filed by Representative Sven A. Erickson, of Worcester, which would prohibit the establishment or maintenance of meter charges by gas and electric companies in cases where a consumer uses more than $9 worth of electricity a year or more than $7 worth of gas.

## Would Tax Dividends of Phone Companies

THE senate by a rising vote of 14 to 6 on July 19th ordered to a third reading the bill providing for the assessment of a 6 per cent tax on the dividends of foreign telegraph, telephone, and Western Union companies commencing with the last quarter dividend of 1932. Senator Henry Parkman, Jr., of Boston, chairman of the committee on taxation, supported the bill and declared that unless the legislation were enacted there would be a $50,000 increase in the state tax, which would be a burden on the real estate owners. He explained that the tax was previously paid under an agreement between the companies and the commonwealth, but that agreement terminated at the end of 1931.

## Pioneer Boston-New York Phone Line Abandoned

ACCORDING to the Boston *Evening Transcript*, the New England Telephone Company on July 1st abandoned the old "Main Line" which was the first toll line between Boston and New York. Gradually the open wire of the old Main Line, which was built in 1887, gave way to underground cable routes. Of late years sections of the first toll line from Boston to New York have been used for trunks between exchanges and much of it has been dismantled altogether. Now the last surviving fragment for the original line, located near Springfield, has been taken down under the supervision of Frank E. Maxted, foreman of the American Telephone and Telegraph Company. Among those who came to watch Mr. Maxted and his dismantling crew was William H. Cavanaugh, now retired, who worked on the Main Line when it was being built in 1887.

As the editor of *Telephone Topics* puts it, the Main Line was as important in the telephone world as Main Street is to an American town. It was the great Number 1 route between much of New England and the outside world. The Boston terminus of the Main Line was in Bowdoin square, just in back of the pseudo-classic Revere House, torn down years ago. The line followed the route of the old Central Massachusetts Railroad to Bondsville, then to Springfield.

A novelty of construction at the time when the line was built was the cross-arm braces to prevent the cross arms from getting out of alignment. In those days, one actually saw the sky, as one old lady complained, "through a gridiron." The firmament was criss-crossed with wires in every direction, and the result was most unsightly. Each pole of the original Main Line was burdened with no less than ten pin cross arms and transposition brackets. During the famous blizzard of '88, the old Maine Line was for weeks the only communication between Boston and New York.

# Michigan

## Object to Thirty-Hour Week for Municipal Railway

THE proposed 30-hour week will not be instituted by the Department of Street Railways at Detroit, Michigan, without an arbitration, as proposed by the street railway commission. In a statement backing the commission's stand against the ordinance, Acting Mayor Couzens said that he was opposed to any plan which would place additional burdens on the street car riders. His attitude was presaged on a commission report which stated that that body must effect $750,000 in additional economies to balance the department's budget in the next six months, and that the 30-hour week would mean an expense of $868,000 during that period, raising the deficit to $1,618,000. Mr. Couzens said that the action the commissioners have taken is proper and the only action they could take under the circumstances. The commission's stand has been supported by the corporation counsel's office, which ruled the ordinance invalid.

A steady decrease in the total riding habit of passengers on the Detroit Street Railway and busses during the six years of Detroit's greatest prosperity, the decrease tripling during the depression, forecasts a critical future for the surface transportation system, Colonel Sidney D. Waldon, of the street railway commission, said on July 17th in a statement in the Detroit *News*. He claimed that it may force such economies as one-man operation and increased fares until these resources are exhausted.

Total revenue passengers declined from 438,153,266 in 1929 to 217,945,567 in 1932, he said, and added that in his opinion rapid transit construction, with Federal financial aid as a "heaven-sent opportunity," is the answer to the Detroit Street Railway's problems.

# Minnesota

## Gas Rate Reduction Must Wait on Federal Code

APPROVAL of the general governing code for industry by President Roosevelt will mean a wait of ten days before the Minneapolis Gas Light Company can reach any definite conclusion regarding the rate proposal it will make to the city council, Charles R. Fowler, company counsel, stated on July 21st. A wait of several days will be necessary to determine the effect of the code on general prices, he said. On July 20th, the company after rejecting the 19.4 per cent rate cut proposed by the Minneapolis city council as excessive, agreed to bring back a counter-proposal to the city council gas committee on August 3rd.

Mr. Fowler's statement before the committee suggested that the present rates should be allowed to run along for the time being, pending clearer understanding of the effects of the national recovery program, and indicated that the company's proposal may involve no material change in present rates.

## St. Paul Gas Rates Held Too Low

ST. Paul gas rates are too low and its electric rates are too high, according to a report filed on July 10th by Burns & McDonnell, Kansas City engineers engaged to evaluate the gas, steam, and electric properties of the Northern States Power Company for the purpose of determining what fair rates for each service ought to be. "The gas company is entitled to earn $249,000 more annually in order to make 7 per cent on its valuation, the steam plant now makes 7 per cent on a fair valuation of the property, and the electric earnings are $600,000 in excess of a 7 per cent return," says the report, which represented a six months' study of the properties, their valuations and cost of operations. The report cost the city $45,500.

# Missouri

## Economist Warns against Decrease in Utility Rates

DR. C. E. McGuire, formerly an official economist for the United States Treasury Department, and connected with Brookings Institute in Washington, D. C., testified before the Missouri commission that in his judgment it would be extremely inadvisable at this time with rising prices for all commodities to reduce utility rates. Adjustment

of such rates might interfere with the program for increased price levels all along the line. The objective of the national administration, Dr. McGuire said, is to raise the price level to that prevailing in 1926, but one of the main objectives is the proper adjustment of all rates. The inference drawn from his testimony on this point is that a reduction in the rates of a regulated utility at this time might in a short time after the reduction be out of line with the increased price levels now sought by the Federal government.

Similar testimony was offered by Dr. G. B. Cox, professor of finance in Chicago University. The testimony came during a hearing recently on the petition of City Counselor Charles M. Hay, of St. Louis, for a 20 per cent reduction in domestic gas rates of the Laclede Gas Light Company.

### Two Street Car Fare Experiments Successful

STREET car riding increased 20 per cent and 26,000 residents of Kansas City obtained transportation at an estimated cost of less than 5 cents a ride during the first week of an experiment in selling weekly passes for $1 each, according to a Kansas City dispatch to the Detroit *News*. At the same time the Kansas City Public Service Company, operating the lines, reported no appreciable decrease in total revenues. The passes, good on all street car routes and "feeder" bus lines, entitle the buyer to an unlimited number of rides during the week. They are transferable, the only restriction being that a pass must remain in the possession of one passenger during one entire trip.

From St. Louis comes the news that the shoppers' bargain street car fare, providing two rides for a dime between 10 A. M. and 4 P. M., will be continued for another week, following the announcement of July 14th in the St. Louis *Globe Democrat* of the result of the conference between city officials and representatives of the St. Louis Public Service Company.

The experimental rate, suggested by City Counselor Hay and city advisors, went into effect on July 10th and can be maintained from week to week or abolished at the discretion of Henry W. Kiel, receiver for the company. The shoppers' fare during the first three days it had been in effect resulted in an increase in passengers during the midday hours of from 20,000 to 28,000.

## Nevada

### New Power Line to Serve Nevada Camp

IN preparation for construction of a 30-mile power line from Jarbridge, Nevada, to the new copper mining camp at Mountain City, Nevada, a crew of surveyors and linemen was sent into the region from Boise, Idaho, on July 19th, M. L. Hibbard, president of the Idaho Power Company announced. Mr. Hibbard said a contract had been drawn with the Mountain City Mining Company, a subsidiary of the Anaconda Copper Mining Company and the International Smelting Company, providing for a 10-year service for construction of the line. The line is being built and will be operated by the Nevada Power Company, a subsidiary of the Idaho Power Company. Materials for the construction will be hauled in large part from Elko, Nevada, over the rough country.

## New York

### Accusation of Utility Tax Fixing Made

HEARINGS before Milo Maltbie, chairman of the New York Public Service Commission, on electric rates in the metropolitan area of New York city were enlivened by the accusations of Robert Moore, of the civic committee of the Delaware Democratic Club that the New York electric companies had paid Benjamin F. Whitebeck $1,300,000 in the period from 1918 to 1929 for "fixing" tax valuations.

Mr. Moore stated that he was prepared to prove his charges if the commission would permit him, but Chairman Maltbie reserved decision pending investigation into the rights of the state body on such procedure. William Ransom, counsel for the Consolidated Gas companies, offered exhibits showing an analysis of taxes accrued, charged to operations. The evidence showed that during the first four months of this year taxes accrued ex-

ceeded the like 1932 period in the case of Brooklyn Edison Company, United Light & Power Company, New York & Queens Electric Light & Power Company, and the Bronx Gas & Electric Company. The New York Edison Company reported a decrease in taxes accrued.

Mr. Ransom also offered exhibits showing that during the 1933 period there was a decline in operating revenues of the New York Edison Company and the United Electric Light & Power Company of 7.2 per cent, and a falling off in total net income of 16.5 per cent.

Mr. Moore's accusation was the high point of the session, and included a mass of figures covering wages, taxes, earnings, and interest rates for the companies, and a brief but heated clash between Mr. Maltbie and James McCoy of the Queens Democratic Service League. Mr. McCoy charged that the commission accepted the reports of the companies on their face value and without an independent check. Chairman Maltbie sternly demanded that Mr. McCoy retract the statement or withdraw from further participation. Mr. McCoy shouted, "I won't be bullied by any one," and refusing to retract he was barred from further examination of witnesses, although he remained in the room.

# Ohio

## Rehearing Sought in Columbus Gas Case

CHARGING that the Ohio Supreme Court failed to read the evidence in the Columbus gas rate case, and that the court was confused on certain matters, Edward C. Turner, attorney for the Columbus Gas & Fuel Company, on July 17th filed an application for a rehearing with the court. Simultaneously Turner announced that the company plans to continue collecting the 55-cent rate for gas by posting a supersedeas bond, until the United States Supreme Court finally disposes of the case. The 48-cent ordinance rate was recently found by the Ohio Supreme Court to be a lawful rate.

# Oregon

## Utility Tax for Investigation Costs Urged

AUTHORITY to assess Oregon public utilities $27,300 to meet increasing expenses of his department was asked of the state emergency board by Public Utilities Commissioner Charles M. Thomas. Assessment of that amount against all utilities for investigation purposes was authorized by a law of the 1933 legislature. It is based on gross income of the firms. The commissioner found that an emergency had arisen in the performance of his duties to require the expenditure of a sum of money greater than the amount available in the public utilities commissioner's fund. Judge Thomas said the additional money is necessary because of the enlarged office personnel and investigations involving various gas, electric, and telephone utilities in the state.

# Washington

## New Dam Project on Columbia River

EASTERN Washington celebrated the beginning of its dream of years, the construction of a vast hydroelectric project, damming the Columbia river and providing water for power and reclamation purposes. At last this work has actually started, with every prospect that when the preliminary program is completed the necessary $60,000,000 for the first unit will be loaned by the Federal government and work will be provided for approximately 20,000 men. At the same time he was engaged in aiding the celebration on the Coulee Dam project, Governor Martin also by proclamation approved the findings of a special legislative committee providing for the construction of a 3-unit canal connecting the Columbia river with Willapa and Grays Harbor and Puget Sound at Olympia.

# The Latest Utility Rulings

## Commission Points to Dangers of Municipally Owned Utilities

SOMETHING new in the relationship between public utility companies and state regulatory bodies was brought out by the California Railroad Commission in the stand it has taken on the part of the municipal ownership idea. The commissioners' opposition to this trend is regarded with special significance because they are the go-betweens for the public and the utilities in a region where the municipal ownership movement has been highly developed. As far as is known no other commission has gone out of its way to present the other side of the picture.

From the utility company standpoint it has been argued that the great electric systems have been able to give service at reasonable rates to farming regions mainly because the interconnection of cities and large towns has created a network of rural transmission lines easily tapped to bring power to the farmer's doorstep. Service to cities and towns has been the cream of the revenue derived by these systems, and every time a city secedes from a system by reason of condemnation and operation by the municipality, the profitableness of the service to the surrounding agricultural area is materially reduced.

Commissioner Whitsell, of the California commission, boiled down this argument against municipal encroachments in the utility field into these words:

> "If municipalities in California continue to condemn and take over the electric distribution facilities within their corporate limits and thereby throw the greater burden of system maintenance and costs upon the backs of our rural population, the time is not far distant when the burden will become too great and agriculture will be compelled to forego use of electric energy or utilities will be compelled to furnish energy at a figure which would not return sufficient compensation to warrant maintenance of systems. Such taking of utility facilities with their resultant disintegration of systems will likewise be injurious to urban as well as rural communities."

The last session of the New York legislature passed a law giving municipalities owning their electric plants the right to serve adjacent suburban territory. California and other states, such as Oregon, have given authority for the establishment of municipal "districts," which may embrace one or more cities in a given area. This would seem to be an answer to the argument that a change-over from private to municipal operation in a given city would turn the farming areas loose from their source of electric supply when and if private capital decided that it was no longer profitable to serve only the open country.

Utility men point out, however, that as a practical matter municipal authorities operating their own plants are reluctant in most cases to raise the cost of service to city residents by diluting it with service to less profitable rural surrounding territory. They claim that one of the reasons why municipal plants seem to be operating at low cost. and appear to have an advantage over private capital, is that the municipal plants skim the cream of the utility business.

The California commissioners made their statement in connection with a decision overruling a small city on the price it asked of the municipal authorities for a condemned plant. The commissioners took the opportunity to call a halt on private plant condemnation by cities because farm development in that state has been so greatly accelerated by the existence of cheap power. Vast areas of farm land in California devoted to raising fruits and vegetables

are dependent upon electricity for their water supply. Without water, public utility men have been stressing for a long time, these farms would contribute less to the income of the state and to the trade of its cities.

The property in question belonged to the Southern California Edison Company and was condemned by the city of Tulare. The company's claims ranged from $843,700 to $1,003,700 on varying bases. Commissioners Whitsell and Ware, however, opposed the price and also condemned splitting of utility properties by municipal purchase. In the latter view the two dissenters were joined by Commissioner Harris, who voted with the majority only as to price. *City of Tulare v. Southern California Edison Co.*

## Nebraska Commission Adopts "Value of Service" Method of Rate Fixing

DURING the last week of June the Nebraska commission issued two orders reducing rates, where the evidence in both cases (according to dissenting opinions written in both cases by Chairman Randall) indicated that the companies were not earning a fair return on the present rate schedule. The first case was that of the Central Nebraska Telephone Company, which operates nine exchanges in west central Nebraska. It is controlled by Denver, Colo., capitalists (according to *Telephony*) who bought the properties during the promotion period, but were restricted by the commission in bond issues to the values shown.

It was also shown in the Central Nebraska Case that revenues of its exchanges in Keystone and Imperial were greater than operating expenses, but during the last year its deficit on all operations was $10,367. There was also evidence that certain dissatisfied subscribers organized a "customers' strike" in order to force a rate reduction on the company. The result was a diminution of patronage.

The commission ordered a six months' trial of new rates that comprised cutting farm rates at Sutherland and Imperial from $2 a month to $1.50, and at Vennago from $2 a month to $1.75, with the switching rate at Grant cut to 50 cents from 65 cents. No changes were made at Palisade, Keystone, Wellfleet, Brady, or Maxwell, although Commissioner Collen who wrote the controlling opinion had recommended deeper cuts originally.

The second case involved rates at the Ord exchange of the Nebraska Continental Telephone Company, against which a formal complaint had been lodged. The order was to cut business and farm rates 50 cents a month, residence rates 25 cents, and switching rates 10 cents to 40 cents. The commission also eliminated free service now being given to North Loup and Burwell, and substituted a 15-cent toll.

In both cases, Commissioner Bollen based his findings and conclusions on the controlling nature of the value of the service, his main argument being that with the quantity of the service being reduced by reason of many farm disconnections, its value was also less. His theory also embraced the premise that lower farm rates would bring back most of the lost patrons. Commissioner Hugh Drake concurred in the reductions of rates for the Central Nebraska Telephone Company on the ground that he was willing to try out for six months Commissioner Bollen's theory that lower rates would bring back sufficient patronage to restore net revenues to the level where a fair return could be earned, although he said there was only one chance in a thousand that this result would follow. He refused to concur in his conclusions of law relating to the importance of fixing rates of the value of the service rendered.

In the Nebraska Continental Com-

pany Case, Commissioner Drake also sided with Commissioner Bollen on the matter of considering the value of service as an element of rate making, but he made it plain that he did so only because he wanted to make a court test of the theory, which he said has no court decisions to back it, although several commissions, notably the Wisconsin commission, had used it during recent months.

Commissioner Drake refused to concur in the findings of the Central Nebraska Case because he thought the company was in no financial condition to take the matter into court, whereas he pointed out as justification for his concurrence in the Ord Case that the Nebraska Continental Telephone Company can and will test this highly debatable regulatory issue. He observed that it would relieve the commission of pressure from a number of other communities that are wanting lower rates because of economic conditions. All three commissioners wrote three different opinions in both cases.

Commissioner Drake was careful to observe that he did not believe the value of service should ever be allowed to overrule cost. He stated that the value of service or what traffic will bear cannot be made a primary criterion of utility rates without many questions being asked as to the method of giving it effect, and if answered at all, in a variety of ways.

Commissioner Bollen appears to have adopted a theory of measuring the value of service which was rejected some weeks ago by the Wisconsin commission. In brief he says that the value of service "is in proportion to the number of stations attached to an exchange within the service area. A considerable loss of stations results in a considerable loss in the value of service." In the recent Wisconsin case, complainants had urged that, because of hard times the patronage of a rural telephone company had declined by 33⅓ per cent, this meant a corresponding 33⅓ per cent diminution in the value of service and should result in a corresponding reduction of rates by one third. The Wisconsin commission rejected the theory as an invalid or accurate measurement of value of service. *Sack et al. v. Nebraska Continental Telephone Co.* (*Formal Complaint No. 726.*) *Re Central Nebraska Telephone Co.* (*Resolution No. 129.*)

## Phone Company Stockholders Must Return Dividends

DIVIDENDS declared by three telephone companies in Ohio from 1927 to 1932 must be canceled under an unusual order by the state utilities commission. Charging the dividends were unearned and illegal, the commission issued the order on July 20th, after having cited directors of the companies to show cause why capital stockholders should not repay the money they received. The commission simply ruled that the utilities—the Warren Telephone Company, the Mt. Vernon Telephone Corporation, and the Central Ohio Telephone Corporation, subsidiaries of the Middlewestern Telephone Company, of Chicago—had failed to justify payment of the dividends. The citation marked the first time the state commission, on its own initiative, had sought to halt payment of alleged illegal dividends.

The commission also directed the companies to withhold further dividend payments except those authorized by law. Under the order, the companies must obtain sanction of the commission before transferring any funds to the parent company in Chicago. Commission investigators had charged the companies had paid "excessive fees" to the parent organization. They further charged that the dividends from 1927 to 1932 actually exceeded the net income.

The Warren Company, it was alleged

by the commission, paid dividends totaling $60,025 when it had a deficit of over $25,000. With a net income of $14,520, the Mt. Vernon Company paid dividends of $63,025, while the Ohio Central Corporation paid dividends of $182,525, notwithstanding an operating deficit of $197,865. Evidence in the case was ordered to be turned over to the attorney general for such action as he might consider is needed. *Re Warren Telephone Co. et al.*

## Petition Seeking Information of Utility Operations Denied

THE West Virginia commission on July 13th denied the petition of Joseph Webb and certain others, complaining in a rate case against the Appalachian Electric Power Company, for an order directing the defendant company to file 24 separate details of information for the complainants' use in a pending rate case. The denial was accompanied by an assurance that the commission is watching the capital structure and expenses of the defendant corporation "to the end that such proper adjustments shall hereafter be made from time to time as may appear just, reasonable, and proper."

The commission based its denial on the fact that at the time no proof had been offered of the alleged violations. It was pointed out in the commission's comment that "the complaint must in all cases establish the facts alleged to constitute a violation of the law." One of the items requested by Webb and his associates was a "detailed and itemized inventory" of the company's properties as of May 1, 1933. Among the other requests was that the company file copies of its contracts and franchises with municipalities, submit a detailed statement of the amount of electricity purchased by the Appalachian Company from affiliated companies and its cost, report expenses for management, legal expenditures, salaries of officials, and information showing properties owned and location of all buildings. It was also requested that a complete analysis of the books of the company be presented, that production, transmission and distribution lines be shown, and that various other pieces of information be given. *Webb et al. v. Appalachian Electric Power Co.*

## Oklahoma Utilities Must Absorb Sales Tax

THE state corporation commission of Oklahoma has ordered the public utility companies in that state to absorb the 1 per cent sales tax instead of passing it on to their customers. The commission's order came on the eve of a sales tax meeting called by the Oklahoma tax commission for the house of representatives chamber at the capital on July 20th, to discuss the new law. Chairman Walker and Commissioner Walton signed the corporation commission order. Commissioner Hughes refused to sign it. The commission order stated:

> "It is hereby ordered that no transportation or transmission company including electric, gas, telephone, and telegraph companies, shall, in any manner, add to the consumer's bill the amount resulting from application of the 1 per cent gross sales tax, without first making a proper application to this commission, and a proper showing that said company is not earning a sufficient return to absorb said gross sales tax."

Municipal utilities were still uncertain of their course under the order and the sales tax. E. F. McKay, secretary of the Oklahoma Utilities Association, said it was not unlikely a conference would be called to discuss the matter. There were reports that utilities would take the order to court. *Re Sales Tax on Public Utilities.*

## New York Commission Considers Bond Discount Question

THAT the New York commission is scrutinizing public utility security applications from a new angle was revealed in an order issued to the New York Telephone Company, authorizing the issuance of $50,000,000 additional stock, which will be taken by the American Telephone and Telegraph Company at par to extinguish an equivalent amount of loans made to the New York company, according to the New York *Sun* of July 17th. The commission raises the point whether utility companies should be allowed to capitalize the discount at which a bond issue was originally sold to bankers and the premium paid to bondholders on bonds called for redemption before maturity.

Specifically, in the New York Telephone Case is this: In 1931, the company called in two bond issues aggregating $65,059,900 for which a premium of $3,899,484 was paid or is to be paid when the stragglers have sent in their bonds. The company borrowed from American Telephone the funds to carry out this operation and sought to capitalize the loan in full by issuing stock.

One of the bond issues, refunding 6s amounting to $50,000,000, was brought out in 1921 for twenty years to finance construction and the purchase of equipment. The bonds netted the telephone company 93, or a total of $46,500,000. This issue was redeemed in 1931 at 105, the premium amounting to $2,500,000.

Following the $50,000,000 financing in 1921, the company set up in the balance sheet as of the end of that year an item described as unamortized debt discount and expense. This item at the end of 1921 was $3,848,000 greater than at the end of 1920. Of this amount $3,500,000 represented the discount at which the refunding 6s had been sold. Each year since then the company has made a charge against earnings to amortize that discount item, so that at the end of 1930 it had been practically extinguished.

Thus, the company had made up the discount on the $50,000,000 before it called those bonds for retirement in 1931. These annual charges against earnings to obliterate the debt discount item meant that equivalent amounts were invested in additional property. During the whole period of amortization the company invested in additional property out of funds deducted for debt discount, a sum at least equal to the $3,500,000 discount. That $3,500,000 was capitalized when the $50,000,000 bonds, for which the company received only $46,500,000 were set up on the books as a liability. The issuance of $50,000,000 stock to retire the bonds simply changes the form of capitalization.

What the public service commission says about capitalizing the premium of $2,500,000 paid for redemption of the bonds is another matter. When the deal is completed the company will have retired $50,000,000 of debt. The commission objects to capitalization of the $2,500,000 premium. *Re New York Telephone Co.*

## Other Important Rulings

THE Oklahoma Supreme Court has vacated a state corporation commission judgment for the Oklahoma Gas Corporation against the Wagner Gas Company on the ground that the commission is without jurisdiction to enforce the judgment for a specific payment of money "resulting from an unpaid open account based upon gas furnished by one public utility to another." *Wagner Gas Co. v. Oklahoma Gas Corp.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*